

CHAPTER III

GENERAL INSPECTION PROCEDURES

A. Compliance Officer Responsibilities.

1. The primary responsibility of the compliance officer is to carry out the purpose of the Hawaii OSH Law, namely, "to assure so far as possible, every working man and woman in the State safe and healthful working conditions". To accomplish this mandate the Division of Occupational Safety and Health employs a variety of programs and initiatives, one of which is enforcement of standards through the conduct of effective inspections to determine if employers are:
 - a. Furnishing places of employment free from recognized hazards that are causing or are likely to cause death or serious physical harm to their employees; and
 - b. Complying with safety and health standards and rules promulgated under the Law.
2. The conduct of effective inspections requires identification, professional evaluation, and accurate reporting of safety and health conditions and practices. Inspections may vary considerably in scope and detail, depending upon the circumstances in each case.

B. Preparation.

1. General Planning. The most important time spent in a compliance officer's professional activity is that devoted to preparing for an inspection.
 - a. Prior to an inspection of an establishment, the compliance officer should become familiar with the establishment's operations and determine which DOSH standards are pertinent. Other pertinent information and data should be reviewed for relevant factors (e.g., case histories, synopses, or other reported safety and health summaries of hazards and accidents).
 - b. A plan for the conduct of the inspection, including probable conditions and questions which may be expected, will improve and expedite the entire inspection. The extent of the plan shall be based on the compliance officer's experience, guidance from the supervisors, advice from other compliance officers and specialists, and the DOSH standards. Establishments with multiple operations that encompass more than one industry or several facets of a major industry may require a more detailed plan and review of the applicable standards.
2. Preinspection Planning. Due to the variety of industries and hazards likely to be encountered, preinspection preparation is essential to the conduct of a quality inspection. The compliance officer together with the supervisor shall carefully review:

- a. All pertinent information contained in the case files and appropriate reference sources to become knowledgeable in the potential hazards and industrial processes that may be encountered and shall identify the personal protective equipment necessary for protection against anticipated hazards; and
 - b. Appropriate standards and sampling methods and, based on experience and information on file concerning the establishment, shall select the instruments and equipment that will be needed for the inspection and prepare them according to the standard methods of sampling and calibration.
3. Preinspection Compulsory Process. Section 12-51-4(b) authorizes the division to seek a warrant in advance of an attempted inspection if "circumstances exist which make the pre-inspection process desirable or necessary." Preinspection warrants have proved to be of limited usefulness because most employers have consented to an inspection.
4. Inspection Materials and Equipment. The compliance officer shall have all report forms and handouts available in sufficient quantity to conduct the inspection and all assigned personal protective equipment available and operable.
- a. If PPE is determined to be necessary, the supervisor shall ensure that any required equipment is provided and that the compliance officer has been trained in the uses and limitations of this equipment.
 - b. Unless an exception is authorized by the supervisor because of the nature of the worksite (e.g., a worksite where no overhead hazards, no eye hazards, and no foot hazards are likely to be present), approved hard hats, approved safety glasses with permanently or rigidly attached side shields, and approved safety shoes shall be worn by compliance officers on the walkaround phase of all inspections. This will set an example for industry and provide minimum acceptable protection for the compliance officer.
 - c. Inspections involving the use of negative pressure respirators shall not be assigned without the compliance officer's having had an adequate qualitative or quantitative fit test within the last year. Since respirators with tight-fitting facepieces require the skin to be clean shaven at the points where sealing occurs, compliance officers assigned to conduct inspections which involve the use of these respirators shall not have interfering facial hair.
 - d. If there is a need for special or additional inspection equipment, the supervisor shall be consulted to ensure that training in the use and limitation of this equipment has been accomplished prior to the inspection. The supervisor shall ensure that a review or recheck in the use of all equipment is given to the compliance officer at least once a year.
5. Expert Assistance. Branch managers shall cooperate in scheduling joint safety

and health inspections or investigations when there are indications that a joint inspection would be more effective. If it appears that the required expertise is not available within the division, the branch manager shall arrange with the administrator to procure the services of qualified consultants. For further details on the selection of experts, see Chapter VIII, D.2.

- a. Expert assistance may be necessary during inspections for the implementation of engineering or administrative controls involving but not limited to, noise, air contaminants, complicated machine guarding, and construction.
 - b. Assisting compliance officers may accompany the compliance officer or perform their tasks separately. Outside consultants must be accompanied by a compliance officer. Assisting compliance officers and outside consultants shall be briefed on the purpose of the inspection and qualified in the use of personal protective equipment to be utilized.
 - c. All data, conclusions, and recommendations from the assigned assistants or consultants shall be made part of the inspection report, including information on any resultant actions.
6. Safety and Health Rules of the Employer. The compliance officer shall comply with all safety and health rules and practices at the establishment and wear or use the safety clothing or protective equipment required by the standards or by the employer for the protection of employees.
7. Immunization and Other Special Entrance Requirements. Many pharmaceutical firms, medical research laboratories, and hospitals have areas, which have special entrance requirements. These requirements may include proof of current immunization and the use of respirators, special clothing, or other protective devices or equipment.
 - a. Compliance officers shall not allow themselves to be endangered. They will not enter any area where special entrance restrictions apply until the required precautions have been taken. It shall be ascertained prior to inspection, if possible, if an establishment has areas with immunization or other special entrance requirements. If the supervisor and compliance officer cannot make a determination through consultation, the branch manager or supervisor may telephone the establishment using the following procedures. This communication will NOT be considered advance notice. (See §12-51-6 and section C of this chapter if advance notice is to be given.)
 - (1) Telephone as far in advance of the proposed inspection date as possible so the employer cannot determine a time relationship between the communication and a possible future inspection.
 - (2) State the purpose of the inquiry and that an inspection may be scheduled in the future. DO NOT GIVE A SPECIFIC DATE.
 - (3) Determine the type of immunization or special precautions, or

both, that may be required and the building or area which has restricted access.

- b. If immunization is required, the supervisor shall ensure that the inspecting compliance officer has the proper immunization and that any required incubation or waiting period is met prior to the inspection. Those immunizations necessary to complete inspections will be provided by the division. (See D.8.e.(2) for procedures to follow if immunization areas are initially identified during walkaround.)

8. Reserved.

C. Advance Notice of Inspections.

- 1. Policy. The Law and §12-51-6 contain a general prohibition against the giving of advance notice of inspections, except as authorized by the director or the administrator.
 - a. The Hawaii Occupational Safety and Health Law regulates many conditions which are subject to speedy alteration and disguise. To prohibit these changes in worksite conditions, the Law prohibits unauthorized advance notice and authorizes representatives of the director to enter worksites "without delay" in order to preserve the element of surprise.
 - b. Advance notice includes those cases where the branch manager or supervisor sets up a specific date or time with the employer for the compliance officer to begin the inspection.
 - c. There may be occasions when advance notice is necessary to conduct an effective investigation within the framework of the Law. These occasions are narrow exceptions to the statutory prohibition against advance notice.
 - d. Advance notice is construed to include those cases where the administrator sets up a specific date or time with the employer for the compliance officer to begin the inspection. It does not include nonspecific indications of potential future inspections.
 - (1) Although advance notice normally does not exist after the compliance officer has arrived at the worksite, presented credentials and announced the inspection, many causes can serve to delay or interrupt the continued conduct of the inspection. For example, the employer representative on site may request a delay of entry pending the return of the president or some other higher ranking official, or sampling may have to be delayed for some reason after completion of the initial walkaround.
 - (a) Such delays shall be as short as possible. If an employer's (or an employee representative's) request for delay appears reasonable, the compliance officer may delay or interrupt the inspection for up to an hour. The supervisor

shall be contacted if the delay lasts or is anticipated to last longer than one hour.

- (b) The supervisor shall decide whether the circumstances justify a delay of more than one hour and, if so, for how long. If the delay appears reasonable, the inspection may be delayed or interrupted for the time judged necessary, but in no case for longer than 5 working days except as indicated in C.1.d.(3).
 - (c) In cases where screening sampling is performed and laboratory analysis of the samples is required, there shall be no more than 5 working days between receipt of screening results and the onset of full-shift sampling.
 - (d) The inspection shall be resumed as soon as reasonably possible. Delays or interruptions of less than 5 working days shall not require implementation of advance notice procedures.
- (2) If the employer or the employee representative requests a delay which the supervisor believes is unreasonable or without sufficient justification (e.g. , too long, not in good faith) or if the delay requested is for more than 5 working days except as indicated in C.1.d.(3), the compliance officer shall inform the requester that division policy does not allow for such a delay. If the employer representative continues to insist on the delay, the situation shall be treated as a refusal of entry and shall be handled in accordance with the procedures in D.1.d. (1).
- (3) In unusual circumstances, the branch manager may decide that a delay of more than 5 working days is necessary; e.g., the process to be sampled may not be activated within that time or compliance personnel may not be available in the branch office because of higher priority demands. Any situation involving a delay of more than 5 working days, whatever the justification, shall be handled as advance notice and must be approved by the branch manager. In such cases the procedures in C.2. shall be observed in addition to the following:
- (a) The compliance officer shall determine whether employees at the worksite are represented by a labor organization or a safety committee and, if so, who the authorized representative of employees is.
 - (b) The compliance officer shall notify the employee representative of the delay as promptly as possible and shall keep the representative informed of future appointments or other arrangements for resuming the inspection.

- (c) If more than one employer is at the worksite, authorized employee representatives of all such employers shall be notified of the delay as promptly as possible and kept informed of arrangements for resuming the inspection.
- (d) The compliance officer may request the employer(s) to inform the employee representatives of the delay and to notify them promptly when arrangements have been made to resume the inspection.
- (e) If there is no authorized representative of employees, the procedures in C.2.h. shall be followed.

2. Procedures. In the situations described in C.1.d. of this chapter, advance notice may be given by the branch manager only if authorized by the administrator. In cases of apparent imminent danger, however, advance notice may be given by the branch manager without this authorization if the administrator is not immediately available. The administrator shall be notified as soon as possible and kept apprised of all details.
 - a. If it is decided to provide advance notice, the branch manager shall do so by telephone contact. This contact shall not be made more than 24 hours prior to the inspection except in unusual circumstances. Documentation of the conditions requiring advance notice and the procedures followed shall be included in the case file.
 - b. If advance notice is to be given at a construction or another multiple employer site, the compliance officer shall contact the general contractor. If there are two or more general contractors, all shall be contacted. The general contractor shall be informed of the responsibilities of advising all subcontractors on the site of the inspection.
 - c. During the telephone contact with the employer, the compliance officer shall identify himself or herself, explain the purpose of the inspection, state when the inspection is expected to be conducted, ascertain the employer's normal business hours, and whether special protective equipment or precautions are required. If security clearances or immunizations are necessary, the supervisor shall be notified. (See B.7. for immunization requirements.) If security clearance is required, it will be necessary to notify the administrator who will make the necessary arrangements.
 - d. An important purpose of advance notice is to make arrangements for the presence of employer and employee representatives to aid in the conduct of an effective and thorough inspection. A responsible management official shall be requested to assist in the inspection. The compliance officer shall advise the employer that the Law and §12-51-8 require that an employee representative be given an opportunity to participate in the inspection.
 - e. The compliance officer shall determine if employees at the establishment

are represented by a labor organization and if there is a safety committee with employee representatives. The compliance officer shall advise the employer that, when advance notice is given, it is the employer's responsibility to notify employee representatives promptly of the inspection.

- f. If a general contractor is contacted, it shall be pointed out that it is that contractor's responsibility to instruct each subcontractor of the obligation to notify employee representatives promptly of the inspection.
- g. If the employer requests and furnishes the identity of the representative, the compliance officer shall promptly inform the employee representative of the inspection and shall provide any other information necessary in accordance with §12-51-8.
- h. The advance notice requirement with respect to employees applies only if there is a known representative authorized by employees, such as a labor organization or a safety committee with employee representatives. The employer should clearly understand that the employer is not permitted to designate an employee representative. If there is no authorized employee representative or if it cannot be determined with reasonable certainty who the representative is, the compliance officer shall consult with a reasonable number of employees during the inspection concerning the impact or possible adverse effects of advance notice.

D. Conduct of the Inspection.

- 1. Entry of the Workplace. The compliance officer shall be particularly careful to make a good first impression upon entry into an establishment. That impression should convey a professional, balanced, and sincere concern for safety and health.
 - a. Time of Inspection. Inspections shall be made during regular working hours of the establishment except when special circumstances indicate otherwise. The supervisor will make recommendations for inspections outside normal working hours to the branch manager, who will consult the administrator. The administrator shall approve entry for other than daytime working hours.
 - b. Severe Weather Conditions. If severe weather conditions encountered during an inspection cause workplace activities to shut down, the inspection shall be continued at a later time as soon as weather permits.
 - (1) If work continues during adverse weather conditions but the compliance officer decides that the weather interferes with the effectiveness of the inspection, it shall be terminated and continued when conditions improve.
 - (2) If work continues and the compliance officer decides to continue the inspection in spite of bad weather, hazardous conditions created by the weather shall be noted since they may be the

subject of later citation.

- c. Presenting Credentials. At the beginning of the inspection, the compliance officer will normally locate the owner, operator, or agent in charge at the workplace and tactfully present credentials. On construction sites this will most often be the representative of the general contractor. The following are some special circumstances and ways for the compliance officer to handle them.
- (1) When the person in charge is not present at the beginning of the inspection, identify the senior person present. This person may be the foreman, leadman, gang boss, or senior member of the crew.
 - (2) When neither the person in charge nor a management official is present, contact the employer by telephone and request the presence of the owner, operator, or management official. The inspection should not be delayed unreasonably to await the arrival of the employer representative. This delay shall not normally exceed one hour.
 - (3) If the person in charge at the workplace cannot be determined by (1) and (2) above, record the extent of the inquiry in the case file and proceed with the physical inspection after contacting the supervisor. If the person in charge arrives during the inspection, an abbreviated opening conference shall be held, and the person shall be informed of the status of the inspection and included in the continued walkaround.
 - (4) When an inspection is programmed for a military base or other federal facilities, the branch manager or supervisor will issue special instructions regarding procedures for entry and inspection.
 - (5) On multi-employer sites the superintendent, project manager, or other representatives of the general or prime contractor shall be asked to identify the subcontractors or other contractors on the site together with the names of the individuals in charge of their operations.
 - (a) The compliance officer shall then request that these individuals be contacted and asked to assemble in the general contractor's office or another suitable location, together with their employee representatives, if any.
 - (b) The inspection shall not be postponed or unreasonably delayed because of the unavailability of one or more representatives.
 - (c) If a federal, State, or local contracting agency representative is on-site, the general contractor's representative shall be requested to contact that representative, advising him or her of the inspection and

extending an invitation to attend the opening conference.

- d. Refusal to Permit Inspection. The Law provides that compliance officers may enter without delay and at reasonable times any establishment covered under the Law for the purpose of conducting an inspection. An employer may insist, however, that a compliance officer seek an inspection warrant prior to entering an establishment and may refuse entry without a warrant.

- (1) Refusal of Entry or Inspection. The compliance officer shall not engage in argument concerning refusal. When the employer refuses to permit entry after the compliance officer has presented proper credentials, or allows entry but refuses to permit an inspection, the compliance officer shall make a tactful attempt to obtain as much information as possible about the establishment. (See D.1.d.(5)(b)Z for the information the compliance officer should attempt to obtain.)

(a) If the employer refuses to allow an inspection of the establishment to proceed, the compliance officer shall leave the premises and immediately report the refusal to the supervisor. The supervisor shall notify the branch manager who shall in turn advise the administrator of the refusal.

(b) If the employer raises no objection to the inspection of portions of the workplace, the compliance officer, after informing the supervisor of the partial refusal, shall normally continue the inspection, confining it to the portions concerning which the employer has raised no objections.

(c) In either case the compliance officer shall advise the employer that the refusal will be reported to the supervisor and that the division may choose to take further action including obtaining legal process.

- (2) Questionable Refusal. When permission to enter or inspect is not clearly given, the compliance officer shall make an effort to clarify the employer's intent.

(a) If there is any doubt as to whether or not the employer intends to permit an inspection, the compliance officer shall not proceed. When the employer's intent is clarified, the compliance officer shall either conduct the inspection or proceed as outlined in D.1.d.(1).

(b) When the employer hesitates or leaves for a period of time so that permission is not clearly given within one hour of initial entry, the compliance officer shall decide whether or not permission is being refused. The compliance officer

may answer reasonable questions presented by the employer (the scope of the inspection, purpose, anticipated length, etc.) but shall avoid giving any impression of unyielding insistence or intimidation concerning the right to inspect. If it becomes clear that the employer is refusing permission to enter, the compliance officer shall leave the establishment and contact the supervisor.

- (3) Employer Interference. Where entry has been allowed but the employer interferes with or limits any important aspect of the inspection, the compliance officer shall immediately contact the supervisor for instructions on whether or not to consider this action as a refusal. Examples of interference are refusals to permit the walkaround, the examination of records essential to the inspection, the taking of photographs, the inspection of a particular part of the premises, private employee interviews, or the refusal to allow attachment of sampling devices.

- (4) Reserved

- (5) Obtaining Compulsory Process. Upon receipt of notification of a refusal of entry (total or partial), the branch manager shall inform the administrator who will consult with the attorney general as soon as practicable.

- (a) Reserved

- (b) If a warrant is to be obtained by the attorney general, the branch manager shall transmit in writing to the administrator, within 48 hours after the determination is made that compulsory process (warrant) is necessary, the following information.

- 1 Telephone number and name of the DOSH supervisor involved.
- 2 Name of the compliance officer attempting inspection and inspection number if assigned. Specify whether inspection to be conducted included safety or health items, or both.
- 3 Legal name of establishment and address. Include site location if different from mailing address.
- 4 Reported number of employees at inspection site.
- 5 SIC Code and high-hazard ranking for that specific establishment within the State, as obtained from the establishment list.

- 6 Summary of all facts leading to the refusal of entry or limitation of inspection including the following.
- a Date and time of entry.
 - b Date and time of denial.
 - c State of denial (entry, opening conference, walkaround, etc.).
- 7 Narrative of all actions taken by the compliance officer leading up to, during, and after refusal including, as a minimum, the following information.
- a Full name and title of the person to whom the compliance officer presented credentials.
 - b Full name and title of person or persons who refused entry.
 - c Reasons stated for the denial by the person or persons refusing entry.
 - d Response, if any, by the compliance officer to c above.
 - e Name and address of witnesses to denial of entry.
- 8 All previous inspection information, including copies of the previous citations.
- 9 Previous requests for warrants. Attach details, if applicable.
- 10 As much of the current inspection report as has been completed.
- 11 If a construction site involving work under contract from any public agency, the name of the agency, the date of the contract, and the type of work involved.
- 12 Other pertinent information such as a description of the workplace; the work process; machinery, tools, and materials used; known hazards and injuries associated with the specific manufacturing process or industry.
- 13 Investigative techniques which will be required, or

are believed to be required, during the proposed inspection; e.g., personal sampling, photographs, examination of records, access to medical records, etc.

- 14 The specific reason for the selection of this establishment for the inspection including proposed scope of the inspection and the rationale.

a Imminent Danger.

- Description of alleged imminent danger situation.
- Date received and source of information.
- Original allegation and copy of typed report, including basis for reasonable expectation of death or serious physical harm and immediacy of danger.
- Whether all current imminent danger processing procedures have been strictly followed or not.

b Fatality/Catastrophe.

- Type of accident--fatality, catastrophe.
- Method of accident notification--telephone, news media (attach copy of report), employee representative, etc.
- Number of employees involved--fatalities, injuries, number hospitalized.

c Complaint.

- Original complaint and copy of typed complaint.
- Reasonable grounds for believing that a violation that threatens physical harm or imminent danger exists, including standards that could be violated if the complaint is true

and accurate.

- Whether all current complaint processing procedures have been strictly followed or not.
- Additional information gathered pertaining to complaint evaluation.

d Referral.

- Original referral and copy of completed Referral Form, OSHA-90.
- Specific description of the hazards observed and the potential injury or illness that may result from the specific hazard.
- Specific standards that may be violated.
- Number of employees affected by the specific hazard.
- Corroborative information or other supporting material to demonstrate potential existence of a hazard and employee exposure, if known.
- Whether all current referral processing procedures have been strictly followed or not.
- Additional information gathered pertaining to referral evaluation.

e Programmed.

- High rate safety--general industry, construction.
- High rate health--general industry, construction.
- Special emphasis program.

f Followup.

- Date of initial inspection.

- Details and reasons followup was to be conducted.
- Copies of previous citations on the basis of which the followup was initiated.
- Copies of settlement stipulations and final orders, if appropriate.
- Previous history of failure to correct, if any.

g Monitoring.

- Date of original inspection.
- Details and reasons monitoring inspection was to be conducted.
- Copies of previous citations on the basis of which the monitoring inspection was initiated.
- PMA request, if applicable.

- (6) Compulsory Process. When a court order or warrant is obtained requiring an employer to allow an inspection, the compliance officer is authorized to conduct the inspection in accordance with the provisions of the court order or warrant. All questions from the employer concerning reasonableness of any aspect of an inspection conducted pursuant to compulsory process shall be referred to the administrator.
- (7) Action to be Taken Upon Receipt of Compulsory Process. The inspection will normally begin within 24 hours of receipt of compulsory process or of the date authorized by compulsory process for the initiation of the inspection.
- (a) The compliance officer shall serve a copy of the compulsory process on the employer and make a separate notation as to the time, place, name, and job title of the individual served.
- (b) The compulsory process has a space for a return of service entry by the compliance officer in which the exact dates of the inspection made pursuant to the compulsory process are to be entered. Upon completion of the inspection, the compliance officer will complete the return of service on the original compulsory process, sign it, and forward it to the supervisor for appropriate action.

- (c) If physical resistance or interference by the employer is anticipated, the administrator will notify the attorney general and appropriate action shall be planned and implemented.
- (8) Refused Entry or Interference With a Compulsory Process. When an apparent refusal to permit entry or inspection is encountered upon presenting the compulsory process, the compliance officer shall specifically inquire if the employer is refusing to comply with the compulsory process.
 - (a) If the employer refuses to comply or if consent is not clearly given (for example, the employer expresses an objection to the inspection), the compliance officer shall not attempt to conduct the inspection but shall leave the premises and contact the supervisor concerning further action. The compliance officer shall make notations (including all possible witnesses to the refusal or interference) and fully report all relevant facts.
 - (b) The administrator will communicate with the attorney general, concerning the refusal to comply or the interference.
 - (c) The administrator, jointly with the attorney general, shall decide what further action shall be taken.
- e. Forcible Interference with Conduct of Inspection or Other Official Duties. The Law states: "Criminal offenses committed against any employee of the State acting within the scope of his office, or employment, or authority under this chapter shall be subject to the penalties set forth in the Hawaii Penal Code"
 - (1) Division Response. Whenever a DOSH official or employee encounters forcible resistance, opposition, interference, etc., or is assaulted or threatened with assault while engaged in the performance of official duties, all investigative activity shall cease.
 - (a) The supervisor shall be advised by the most expeditious means.
 - (b) Upon receiving a report of forcible interference, the supervisor or branch manager shall immediately notify the administrator.
 - (2) Types of Interference. Although the employer is legally entitled to refuse permission to conduct an inspection without a warrant, the Law does not permit forcible conduct against the compliance officer. The following illustrates the type of forcible conduct, which shall be immediately reported to the supervisor.

- (a) Anyone physically holding, grabbing, pushing, shoving, or in any way limiting the official's or employee's freedom of action or choice of action. The threat of any action which limits freedom of action or choice of action is included.
 - (b) Anyone striking, kicking, or in any way inflicting or attempting to inflict injury, pain, or shock on the official or employee. The threat of these actions is included as is oral abuse which menaces or causes concern for the official's or employee's personal safety.
 - (c) Anyone assaulting or threatening the official or employee with a weapon of any kind. The handling or display of weapons in a menacing manner is included.
- f. Release for Entry. The compliance officer shall not sign any form or release, or agree to any waiver. This includes any employer forms concerned with trade secret information.
 - (1) If the employer requires that a release be signed before the compliance officer enters the establishment, the compliance officer shall inform the employer of the director's authority under the Law. If the employer still insists that a release be signed, the compliance officer shall suspend the inspection and report the matter promptly to the supervisor who shall decide if the situation is to be treated as a refusal of entry.
 - (2) The compliance officer may sign a visitor's register plant pass, or any other book or form used in the establishment to control the entry and movement of persons upon its premises. The signature shall not constitute any form of a release or waiver of prosecution or liability under the Law.
 - (3) In case of any doubt, the compliance officer shall consult with the supervisor before signing any document.
- g. Bankrupt or Out of Business. If the establishment scheduled for inspection is found to have ceased business and there is no known successor, the compliance officer shall report the facts to the supervisor. If an employer, although adjudicated bankrupt, is continuing to operate on the date of the scheduled inspection, the inspection shall proceed. An employer must comply with the Law until the day the business actually ceases to operate.
- h. Strike or Labor Dispute. Plants or establishments may be inspected regardless of the existence of labor disputes involving work stoppages, strikes, or picketing. If the compliance officer identifies an unanticipated labor dispute at a proposed inspection site, the supervisor shall be consulted before any entry is made.

- (1) Programmed Inspections. As a rule, programmed inspections will be deferred during a strike or labor dispute, either between a recognized union and the employer or between two unions competing for bargaining rights in the establishment.
 - (2) Unprogrammed Inspections. As a rule, unprogrammed inspections (complaints, fatalities, etc.) will be performed during strikes or labor disputes. However, the seriousness and reliability of any complaint shall be thoroughly investigated by the supervisor prior to scheduling an inspection to ensure as far as possible that the complaint reflects a good-faith belief that a true hazard exists and is not merely an attempt to harass the employer or to gain a bargaining advantage for labor. If there is a picket line at the establishment, the compliance officer shall inform the appropriate union official of the reason for the inspection prior to crossing the picket line and initiating the inspection.
- i. No Inspection. If a scheduled inspection cannot be conducted, the compliance officer shall document the reasons for not conducting the inspection, and shall include the names of persons contacted on the HIOSHL-1A form to be included in the case file.
2. Employee Participation. Compliance officers shall ensure that employee representatives are afforded the opportunity to participate in all phases of the workplace inspection. If an employer resists or interferes with employee participation in an Inspection and this cannot be resolved by the compliance officer, the supervisor shall be contacted, who shall consult the branch manager and administrator to determine appropriate action.

NOTE: For the purpose of this chapter, the term "employee representative" refers to (1) a representative of the certified or recognized bargaining agent, or, if none, (2) an employee member of a safety and health committee who has been chosen as DOSH representative by the employees (employee committee members or employees at large) as their representative, or (3) an individual employee who has been selected as the walkaround representative by the employees of the establishment.

3. Opening Conference. The compliance officer shall inform the employer of the purpose of the inspection and shall request the employer's permission to include participation of an employee representative, as defined in D.2., when appropriate. The opening conference shall be kept brief, normally not to exceed one hour. Conditions of the worksite shall be noted upon arrival as well as any changes which may occur during the opening conference. Pursuant to §12-51-8, the employer and the employee representatives shall be informed of the opportunity to participate in the physical inspection of the workplace.

NOTE: An abbreviated opening conference shall be conducted whenever the compliance officer believes that the circumstances at the worksite dictate that the walkaround begin as promptly as possible. In such cases the opening conference shall be limited to the bare essentials; namely, identification, purpose of the visit, and a request for employer and

employee representatives. The other elements shall be fully addressed in the closing conference.

- a. Purpose of the Inspection. The employer shall be informed as to the reason for the inspection.
 - (1) Imminent Danger Situations. When responding to an alleged imminent danger situation, the compliance officer is required to get to the location of the alleged hazards as quickly as possible. Under these circumstances, an expedited opening conference shall be conducted by limiting activities to presenting credentials and explaining the nature, scope, and purpose of the inspection.
 - (a) Potential safety and health hazards that may be encountered during the inspection shall be identified and appropriate steps taken to provide for personal protection.
 - (b) The presence of employer and employee representatives shall be requested; however, the inspection shall not be unreasonably delayed to await their arrival.
 - (c) The employer shall be advised that, because of the abbreviated nature of the opening conference, there will be a more extensive discussion at the closing conference.
 - (d) Unreasonable delays shall be reported immediately to the supervisor.
 - (2) Fatality/Catastrophe Investigations. The employer shall be informed that an investigation will be conducted and extensive interviews with witnesses will be necessary. The purpose of an accident investigation shall be explained, namely, to determine:
 - (a) The cause of the accident;
 - (b) If a violation of safety and health standards related to the accident occurred;
 - (c) What effect the standard violation had on the occurrence of the accident; and
 - (d) If standards should be revised to correct the hazardous working condition that led to the accident.
 - (3) Complaint Investigations. For a complaint investigation, the compliance officer shall provide a copy of the complaints to the employer and employee representatives at the beginning of the opening conference.
 - (4) Referral Investigations. During the opening conference of a referral investigation, the compliance officer shall inform the

employer that the investigation is a result of a referral (e.g., from another agency, from a previous DOSH inspection, or in response to specific evidence of probable violations at a worksite).

- b. Health Inspections. During a health inspection the compliance officer shall conduct the opening conference in accordance with these additional procedures.
 - (1) Request process flow charts and plant layouts relevant to the inspection. If the plant layout and process flow charts are not available, sketch a plant layout as necessary during the course of the inspection, identifying the operations and the relative dimensions of the work area. Distribution of major process equipment, including engineering controls in use, shall also be included on the sketch.
 - (2) Make a brief examination of all workplace records pertinent to the inspection.
 - (a) If detailed review is necessary, the compliance officer may wish to proceed to the walkaround and then later return to examine the records more thoroughly.
 - (b) Some valuable insights can be determined from required and other records to ensure a more effective inspection (e.g., symptomatology which may relate to workplace exposure, frequency of injuries or illnesses, dermatitis, personal protective equipment usage, monitoring data, audiometric test results, ventilation tests, process flow charts, and a list of hazardous raw, intermediate, and final product materials).
 - (c) In some plants, sampling for obvious health hazards can be initiated soon after the opening conference. Details of the walkaround can be accomplished while collecting the samples.
- c. Attendance At Opening Conference. The compliance officer shall conduct a joint (employer and employee representatives) opening conference or separate conferences
 - (1) Joint Conference. The option of holding a joint opening conference belongs to the employer. However, whenever practicable, a joint opening conference shall be held with the employer and the employee representatives (if there is an employee representative as defined in D.2. of this chapter).
 - (2) Separate Conferences. Where the employer chooses not to have a joint conference, separate conferences shall be held for the employer and the employee representatives. A written summary of each conference shall be made and attached to the case file. A

copy of the written summaries will be available from the administrator upon request by the employer or the employee representative. Where it is determined that separate conferences will unacceptably delay observation or evaluation of the workplace safety or health hazards, each conference shall be brief, and if appropriate, reconvened after the inspection of the alleged hazards.

- d. Scope. The compliance officer shall outline in general terms the scope of the inspection, including private employee interviews, physical inspection of the workplace and records, possible referrals, discrimination complaints, and the closing conference.
- e. Handouts and Additional Items. During the opening conference of an inspection, the compliance officer shall provide:
 - (1) The employer representatives with copies of applicable laws, standards, rules, and informational handouts and materials. (The compliance officer shall also inform the employer representatives of procedures for obtaining copies of any materials of which the compliance officer may not have a sufficient quantity on hand); and
 - (2) The employee representatives with applicable laws, information regarding standards and rules, and informational handouts and materials and shall inform them that copies and other materials can be obtained from the division office when the compliance officer has an insufficient number on hand. (The employee representatives shall be given an opportunity to read the brief introductory material before the inspection begins.)
- f. Program Mix. The compliance officer shall briefly indicate that DOSH shares the employer's goal of reducing workplace injuries and illnesses, that the division has a variety of approaches which are designed to assist the employer in achieving this goal, and that a more detailed discussion of the OSH program mix will take place during the closing conference.
- g. Form Completion. The compliance officer shall obtain available information for the HIOSHL-1 and other appropriate forms and complete applicable sections during the opening conference.
- h. Employees of Other Employers. During the opening conference, the compliance officer shall determine if the employees of any other employers are working at the establishment.
 - (1) If there are such employees and any questions arise as to the appropriateness of the inspection, the compliance officer shall contact the supervisor to ascertain if additional inspections are to be conducted and what limitations there may be to any additional inspection activity.

- (a) All high rate employers potentially present at any scheduled worksite normally shall be included within the scope of the inspection, except as indicated in (b) and (c) below. Thus, for example, all construction contractors working at a manufacturing establishment scheduled for inspection are to be included in the inspection assignment.
 - (b) When, however, the criteria given in Chapter IX, B.2.b.(1)(d), are met, a compliance officer referral may be made and an inspection conducted under the guidelines outlined in Chapter IX.
 - (c) When a construction operation is too large to be efficiently handled during the inspection of the programmed manufacturing establishment, the operation shall be treated as a referral for inspection at a later time, in accordance with Chapter IX, B.
- (2) If additional inspections are authorized, both employer and employee representatives of the other employers shall be invited to the opening conference. The inspection shall not be delayed to wait for these employer or employee representatives longer than would be reasonably necessary for either to arrive.
 - (3) If the site is a multi-employer site, such as construction, the compliance officer shall determine during the opening conference who is responsible for providing common services available to all employees on site (e.g., sanitation, first aid, handrails, etc.). It shall be pointed out to all contractors that, apart from any arrangements that may have been made, each employer remains responsible for his or her own employees.

i. 7(c)(1) and Contract Consultations. In accordance with the DOSH Guideline on Congressional Funding Restrictions, the compliance officer shall ascertain at the opening conference if a DOSH consultant is presently engaged in consultation activity at the facility or whether the facility is pursuing or has received an inspection exemption through consultation under current procedures.

- (1) An on-site consultation visit in progress has priority over programmed inspections, unless otherwise determined by the administrator. Thus, if a consultation is in progress and the compliance officer is on a programmed inspection, the compliance officer shall leave the premises and notify the supervisor.
 - (a) For conditions covered by the employer's request for consultation, an onsite consultation commences with the opening conference and terminates on the date agreed upon for correction of serious hazards. If the consultation visit extends over a period of 30 days or more, a compliance inspection may be authorized by the

administrator for good cause to cover areas not already included in the consultation.

- (b) For conditions not covered by the employer's request, the onsite visit shall be considered in progress only while the consultant is at the place of employment.
- (2) If a followup inspection or an imminent danger, fatality/catastrophe, or complaint investigation is to be conducted, the inspection shall not be deferred; however, its scope shall be limited to the areas required to conduct the investigation. The employer shall be advised that the consultant may continue the onsite visit in areas of the facility not under investigation or terminate the visit until the investigation is completed.
- (3) Special circumstances may arise since similar data are used to target inspections and consultations.
 - (a) When an inspector is advised that a consultation has been performed within 30 days of the inspection, the administrator shall be informed. When draft reports of the inspection are completed, they shall be presented to the administrator who will reconcile the reports. Reconciliation generally will consist of granting credit that the employer is acting in good faith to correct hazards and deficiencies disclosed during consultation, even though not completed at the time of the inspection. Items in this category will not be cited, but the case file will contain appropriate explanation.
 - (b) When abatement assistance is requested before the 20-day contest period expires, the consultation will not be scheduled without the administrator's approval. Similarly, when the citation has become a final order but there is time remaining before the ordered correction date, the administrator shall be consulted before a consultation visit is scheduled.

j. Other Opening Conference Topics. The compliance officer shall ascertain the following at the beginning of the opening conference.

- (1) Legislative Limitations. Whether or not the employer is covered by any of the exemptions or limitations noted in the Guideline on Congressional Funding Restrictions.
- (2) Potential Hazards. The compliance officer shall ensure that all members of the inspection party are adequately equipped for anticipated hazards.
- (3) Trade Secrets. Whether or not the employer wishes to identify areas in the establishment which contain or might reveal trade

secrets. If trade secrets are identified, the compliance officer will explain that DOSH is required by law to preserve the confidentiality of all information which might reveal a trade secret in accordance with §12-51-9. (See D.8.e.(1) for further instructions.)

- (4) Photographs. Whether or not the employer has any objection to taking photographs as permitted by §12-51-7(b). If the employer does object, the compliance officer shall immediately notify the supervisor in accordance with D.1.d.(3).

4. Reserved.

5. Walkaround Representatives. Those representatives designated to accompany the compliance officer during the walkaround are considered walkaround representatives.

- a. Employer Representatives. Anyone designated by the employer as a representative is acceptable. In cases of isolated or remote locations, the senior supervisor, foreman, gang boss, or head technician on-site at the time of inspection is the employer representative. Every reasonable effort shall be made to afford general walkaround rights to every employer representative on a multi-employer worksite.

- b. Employee Representatives. One or more employee representatives shall be given an opportunity to accompany the compliance officer during the walkaround phase of the inspection to provide appropriate involvement of employees in the physical inspection of their own places of employment and to give them an opportunity to point out hazardous conditions. Section 12-51-8(b) gives the compliance officer authority to resolve disputes about whom represents the employees for walkaround purposes. The following guidelines are suggested in designating employee representatives.

- (1) Employees Represented by a Certified or Recognized Bargaining Agent. During the opening conference, the highest ranking union official or union employee representative shall designate those who will participate in the walkaround.

- (2) Safety Committee. The employee members of an established plant safety committee or the employees at large may have designated an employee representative for DOSH inspection purposes or agreed to accept as their representative the person (when an employee) designated by the committee to accompany the compliance officer during a DOSH inspection. This representative shall have the opportunity to participate in the walkaround.

- (3) No Certified or Recognized Bargaining Agent. Where employees are not represented by an authorized representative, where there is no established plant safety committee, or where employees

have not chosen or agreed to an employee representative for DOSH inspection purposes whether or not there is a safety committee, the compliance officer shall determine if any other employees would suitably represent the interests of employees on the walkaround. If this selection of employee representatives is impractical, the inspection shall be conducted without an accompanying employee representative and the compliance officer shall consult with a reasonable number of employees during the walkaround in accordance with the provisions of §12-51-8(b). Selection of random employees to interview shall include individuals knowledgeable about the area or process being inspected.

6. Special Situations

- a. Reserved.
- b. Labor Relations Disputes. The compliance officer shall not become involved in labor relations disputes between either a recognized union and the employer or two or more unions competing for bargaining rights. However, if there is a recognized union, the highest ranking official available will designate the authorized walkaround representative even though another union may be seeking recognition.
- c. Expired Collective Bargaining Agreement. When a contract has expired, the compliance officer shall assume that the incumbent union remains as the bargaining agent unless that union is decertified, officially replaced, or has abandoned bargaining agent status.
- d. Employee Representatives Not Employees of the Employer. Walkaround representatives authorized by employees will almost always be employees of the employer. If, however, in the judgment of the compliance officer, unique circumstances make the presence of a nonemployee third party (industrial hygienist, safety engineer, or other experienced safety or health persons) necessary or helpful to the conduct of an effective and thorough physical inspection of the workplace, such a person may be designated by the employees as their representative to accompany the compliance officer during the inspection (§12-51-8(c)). Questionable circumstances, including any unreasonable delays, will be referred to the supervisor. A nonemployee representative shall be cautioned by the compliance officer not to discuss matters pertaining to operations of other employers during the inspection.
- e. More Than One Representative. At establishments where more than one employer is present or in situations where groups of employees have different representatives, it is acceptable to have a different employer or employee representative for different phases of the inspection. More than one employer or employee representative may accompany the compliance officer throughout or during any phase of an inspection if the compliance officer determined that these additional representatives will aid and not interfere with the inspection (§12-51-8(a)).

- (1) Whenever appropriate to avoid a large group, the compliance officer shall encourage multiple employers to agree upon and choose a limited number of representatives for walkaround accompaniment purposes. If necessary, during the inspection, employer representatives not on the walkaround shall be contacted to participate in particular phases of the inspection.
 - (2) As an alternative, the compliance officer shall divide a multi-employer inspection into separate phases (excavation, steel erection, mechanical, electrical, etc.) and encourage different employer representatives to participate in different phases, as appropriate.
 - (3) The same principles shall govern the selection of employee representatives when several are involved.
- f. Disruptive Conduct. The compliance officer may deny the right of accompaniment to any person whose conduct interferes with a full and orderly inspection (§12-51-8(e)). If disruption or interference occurs, including harassment of a sexual nature, the compliance officer shall use professional judgment as to whether to suspend the walkaround or take other action. The supervisor shall be consulted if the walkaround is suspended. The employee representative shall be advised that during the inspection matters unrelated to the inspection shall not be discussed with employees.
- g. Trade Secrets. The compliance officer shall ascertain from the employer if the employee representative is authorized to enter any trade secret area. If not, the compliance officer shall consult with a reasonable number of employees who work in the area (§12-51-9(b)).
- h. Classified Areas. In areas containing information classified by an agency of the U.S. Government in the interest of national security, only persons authorized to have access to this information may accompany a compliance officer (§12-51-8(e)). The compliance officer must also have the proper security clearances to enter these areas.
- i. Apparent Violations Observed Prior to the Walkaround. When an apparent violation is observed by the compliance officer prior to the walkaround, it shall be noted. All of these apparent violations shall be rechecked during the walkaround and cited if appropriate. When possible, serious violations shall be rechecked and documented immediately at the commencement of the walkaround.
- j. Use of Tape Recorders. The use of tape recorders during the required conferences may inhibit the free exchange of information, and care shall be exercised in their use. Tape recorders may be used by the compliance officer only after authorization by the supervisor.
- (1) The use of tape recorders may be authorized whenever

circumstances justify it, such as where there is conflicting evidence indicating that the preservation of statements is advisable or where securing signed statements from affected employees will delay the expeditious completion of the investigation.

- (2) The tape recorder shall not be used in locations where it may be hazardous.
- (3) If the employer, employer representative, affected employees, or any other witnesses object to recording their statements during any part of the investigation, the inspection shall be continued without the tape recorder.

7. Inspection of Records and Posting. Every inspection of an employer required to keep injury and illness records, including followup inspections, shall include an examination and verification of such records. Examination of other records and of the posting requirements shall be performed as appropriate in accordance with current procedures.

a. Records. The compliance officer shall comply with the records review procedures that follow for all inspections, programmed or unprogrammed, of employers required to keep the records in question. Findings shall be documented in the case file.

(1) Injury and Illness Records. All injury and illness records required by the standards (if not already reviewed during the records review) shall be examined. Medical and first aid records may also be reviewed.

(2) Hazard Communication. For all safety and health inspections, the compliance officer shall determine if the employer is covered by the hazard communication standard. If so, the compliance officer shall ensure that the applicable requirements of the standards have been met and that the program is effective. To ensure that the employer has an effective hazard communication program, the following shall be performed:

(a) The compliance officer shall confirm recordkeeping and training requirements by conducting employee interviews and documenting their responses in the case file.

(b) The compliance officer shall conduct a brief tour of the facility to confirm compliance with the following elements of the hazard communication standards:

1 The existence of a written hazard communication program.

2 The required list of hazardous chemicals.

- 3 The existence of and reliance upon hazard determination procedures.
 - 4 The existence and availability of material safety data sheets in the work area.
 - 5 Inplant and shipped container labeling programs.
 - 6 The effectiveness of required training.
- (3) Access to Employee Exposure and Medical Records. During all health inspections and safety inspections when designated by the supervisor, the compliance officer shall determine if applicable exposure and medical records are being maintained in accordance with the medical surveillance recordkeeping requirements of section 12-202-3. Compliance officer access to the employee medical records is authorized for the limited purpose of verifying employer compliance with those requirements. Review of the content of such medical records may require a written access order or express employee consent.
- (4) Other Records. Any other records which fall within the scope of the inspection and which are related directly to the purpose of the inspection shall be examined. These may include, but are not limited to:
 - (a) Required certification records properly completed and any available equipment inspection and maintenance records;
 - (b) Medical surveillance or monitoring records, employee exposure records and other medical records not falling under D.7.a.(3)

NOTE: Whenever circumstances indicate or whenever assigned by their supervisors, adequately cross-trained compliance officers conducting a safety inspection shall also conduct a survey of records required by various health standards to be maintained by the employer. These required records may be evaluated by the compliance officer at the site or may be copied for examination by the health staff.
 - (c) Safety committee minutes; checklists; records of inspections conducted by plant safety and health committees, insurance companies, or consultants; if voluntarily supplied by the employer.
 - (d) Variance documentation.

- b. Posting. The compliance officer shall determine if posting requirements

are met in accordance with chapters 12-51 and 12-52. These include, but are not limited to:

- (1) DOSH poster informing employees of their rights and obligations under the Law.
- (2) Log and Summary of Occupational Injuries and Illnesses during the month of February.
- (3) Current citations, if any.
- (4) Petitions for Modification of Abatement Date (PMAs).

c. Additional Information to Supplement Records Review. It is DOSH policy that all safety and health inspections include an entry into and survey of the workplace. The information gathered during this survey will supplement the records review and serve to confirm or revise the determination as to whether the inspection's scope should be expanded.

- (1) Accordingly, for all safety and health inspections, the compliance officer shall review the employer's overall safety and health management program and specific programs such as those related to personal protective equipment and respiratory protection to evaluate their effectiveness and identify deficiencies
- (2) This review shall include a brief survey of the workplace, focusing on any high hazard areas. This survey will normally be conducted in conjunction with the tour of the facility to assess hazard communication compliance described at D.7.a.(2)(b).
- (3) The inspection shall be expanded to either a partial or a comprehensive inspection, following consultation with the branch manager based on the following factors:
 - (a) Lack of a comprehensive safety and health management program. (See D.8.a.(2).)
 - (b) Significant deficiencies in specific programs such as respiratory protection programs, hazard communication, wire rope inspection for cranes, and fire protection programs.
 - (c) Serious violations of safety and health standards uncovered during the plant tour.
 - (d) Concentrations of injuries or illnesses in specific areas of the plant.
 - (e) Significant past history of serious safety and health violations at the plant.

- (4) If it is determined to expand the inspection to either a partial or comprehensive inspection, the employer shall be immediately so notified.
 - (5) Observed violations shall be documented and cited appropriately.
- 8. Walkaround Inspection. The main purpose of the walkaround is to identify potential safety or health hazards in the workplace. The compliance officer shall conduct the inspection using appropriate protective equipment to preclude personal exposure to hazards.
 - a. General Procedures. It is essential during the walkaround for the compliance officer to:
 - (1) Become familiar with plant processes, collect information on hazards, observe employees' activities and interview them as appropriate.
 - (a) For health inspections, a preliminary tour of the establishment normally shall be accomplished before any decision to conduct an in-depth industrial hygiene investigation.
 - (b) Such a preliminary walkaround shall survey and evaluate existing engineering controls and collect screening samples, when appropriate, to determine the need for full-scale sampling.
 - 1 If screening reveals potentially high exposure levels, a comprehensive health inspection shall be conducted.
 - 2 If screening samples must be sent to the laboratory for analysis, the employer shall be so informed.
 - a If the laboratory results show that potentially high employee exposure levels exist, full-scale sampling of the potentially hazardous areas will be conducted.
 - b If the results are negative, the file will be closed.
 - (2) Evaluate the employer's safety and health program (whether written or not) as follows:
 - (a) By ascertaining the degree to which the employer is aware of potential hazards present in the workplace and the methods in use to control them;
 - 1 What plans and schedules does the employer have

to institute, upgrade and maintain engineering and administrative controls?

2 What is the employer's work practices program?

- (b) By determining employee knowledge of any hazards which exist in the establishment; the extent to which the employer's program covers the precautions to be taken by employees actually or potentially exposed to plant hazards; emergency procedures and inspection schedules for emergency personal protective equipment; the program for the selection, use and maintenance of routine personal protective equipment; and the overall quality and extent of the educational and training program and the degree of employee participation in it.

1 Compliance with the training requirements of any applicable safety and health standard shall be determined.

2 The following specific elements of the establishment safety and health program shall be evaluated in the detail appropriate to the circumstances of the inspection:

a Comprehensiveness. Evaluate the degree to which the employer's safety and health program addresses the full range of hazards normally encountered in the employer's operations. This is an overall evaluation and shall take into account the evaluations of the remaining categories. Indicate whether the program is written.

b Communication. Evaluate the employees' awareness of and access to the safety and health program, taking into account the principal means by which the program is communicated to them (e.g., oral instructions, booklets, memorandums, posters, etc.). Consider whether safety meetings are held by the employer, their frequency and the persons conducting them (e.g., crew foremen, intermediate level supervisors, safety director, etc.) The effectiveness of these means shall be considered in the evaluation.

c Enforcement. Evaluate the degree to which safety and health rules are actually enforced, taking into account the principal

methods used (e.g., warnings, written reprimands, disciplinary action, discharge, etc.) and the effectiveness of these methods. Determine whether there is a staff (or one specific person) with assigned safety or health responsibilities and consider the effectiveness of the staff's performance.

d Safety/Health Training Program. Evaluate separately any safety and health training programs the employer has. Factors to be considered include the need for special training in view of the hazards likely to be encountered or of specific requirements for such training and the need for ongoing or periodic training or retraining of employees.

e Investigations. Evaluate the employer's efforts to make accident/injury/illness investigations and indicate whether adequate corrective and preventive actions are taken as a result.

(3) Record all facts pertinent to an apparent violation on the appropriate compliance worksheets. Apparent violations shall be brought to the attention of employer and employee representatives at the time they are documented.

(a) All notes, observations, analyses, and other information shall be either recorded on the worksheet or attached to it.

1 Because this documentation is required for each instance of an alleged violation, the compliance officer shall normally use one worksheet to describe each instance as it is noted.

2 If identical violations of the same standard or of several related standards are noted in one general location in the establishment and if the documentation is essentially the same, all of those violations may be treated as a single instance description and only one worksheet need be completed for that instance.

3 Photographs, sketches, and descriptions that are attached to the worksheet are part of the inspection record and shall be noted on the form. The original field notes, as a basic documentation of the violation, shall be attached to the worksheet and

retained in the case file.

- (b) The compliance officer shall provide as much detailed information as practical to establish the specific characteristics of each violation as follows:

1 Describe the observed hazardous conditions or practices (i.e., the facts which constitute a hazardous condition, operation or practice and the essential facts as to how and why a standard is allegedly violated). Specifically identify the hazards to which employees have been or could be exposed. Describe the type of accident which the violated standard was designed to prevent in this situation, or note the name and exposure level of any contaminant or harmful physical agent to which employees are, have been or could be exposed. If more than one type of accident or exposure could reasonably be predicted to occur, describe the one which would result in the most serious injury or illness. For the type of accident described, include:

a All factors about the violative condition which could significantly affect the nature and severity of the resulting injuries (e.g., "fall of 20 feet onto protruding rebar" "fall into water-filled excavation").

b Other factors which could affect the probability that an injury would occur, such as:

- ° Proximity of the workers to the point of danger of the operation.
- ° Stress producing characteristics of the operation (e.g., speed, heat repetitiveness, noise, position of employee).

c For contaminants and physical agents, any additional facts which clarify the nature of employee exposure.

d The identification of the equipment and process which pose the hazards; i.e., serial numbers, equipment types, trade names, manufacturers, etc. Include a sketch when appropriate.

e The specific location of the violation; e.g.

- ° Building No. 3, second floor, column no. 6.
- ° Machine Shop, N.E. corner, Department 12.
- ° Foundry, N.W. corner, shakeout area.

f State the nature of the more serious types of injury or illness which it is reasonably predictable could result from the accident or health exposure.

- ° Thus, the entry for the "fall from 20 feet onto protruding rebar" might read "death from multiple injuries." For exposure to asbestos, the entry might read "asbestosis, cancer and death."
- ° Broad categories of injuries and health effects (such as "electric shock," "burns," or "lacerations") shall be qualified to indicate whether the injuries or health effects are major or minor.
- ° In identifying the illnesses which a standard regulating exposure to an air contaminant or harmful physical agent is designed to prevent in a particular worksite, it may be necessary to consider not only the level of exposure but also the frequency and duration of exposure to the contaminant or agent.

g Evaluate the probability of an injury and explain the selection of probability and severity factors.

h Any specific measurements taken during the inspection (e.g., "20 ft. distance from top of scaffold platform to ground level"; "employee standing 2 ft. from unguarded floor edge"; "employee seated 2 ft. from source of metal fumes") which will further document the nature of the hazardous conditions and operations.

- Describe how measurements were taken during the inspection,
- Identify the measuring techniques and equipment used and those who were present; i.e., employee or employer representative who observed the measurements being taken.
- Include calibration dates and description of calibration procedures used, if appropriate.

i Exposure facts so as to present a picture of employee exposure to the hazard for each particular occupation, including:

- The occupation and the employer of the exposed employees if the employer is different from the one on the corresponding HIOSHL-1-1.
- The number of exposed employees in that occupation.
- The length of time that the alleged violation has existed.
- The duration and frequency that the employees are exposed (e.g., 2 hrs. /wk).
- The name, address (with zip code) and telephone number of at least one exposed employee in each occupation. If necessary, signed and dated witness statements shall be obtained and attached to the worksheet.

EXAMPLE: A radial arm saw has been on a construction site for 3 months and has never been guarded during that time. All of the employer's 14 carpenters on the job use the saw. One of the carpenters is John Doe. Total use of the saw on a daily basis is approximately 4 hours.

i Any facts which establish that the employer

knew of the hazardous condition or could have known of that condition with the exercise of reasonable diligence. Enter any facts which show that:

- ° The employer actually knew of the hazardous condition which constitutes the violation. In this regard, a supervisor represents the employer and supervisory knowledge amounts to employer knowledge.
- ° The employer could have known of the hazardous condition if all reasonable steps had been taken to identify hazards to which employees may have been exposed. As a general rule, the compliance officer can presume that the employer could have discovered the condition through the exercise of reasonable diligence.

NOTE: If the compliance officer has reason to believe that the violation may be a wilful violation, facts shall be included to show that the employer knew that the condition existed and, in addition, knew that, by law, he had to do something to abate the hazard (e.g., the employer was previously cited for the same condition; a compliance officer had already told the employer about the requirement; knowledge of the requirement was brought to the employer's attention by an employee safety committee, etc.). also include facts showing that, even if he was not consciously violating the Law, the employer was aware that the violative condition existed and made no reasonable effort to eliminate it.

k Any pertinent employer or employee remarks made during the walkaround and/or the closing conference, especially comments directly related to the instance described.

- Include employer comments which may be characterized as admissions of the specific violations described.
- Include any other facts which may assist in evaluating the situation or in reconstructing the total picture in preparation for testimony in possible legal actions.
- Include any additional comments (by the compliance officer), particularly any explanation of abatement of dates when necessary (e.g., when longer than 5 days for a serious violation or when an abatement period exceeding 30 days is recommended and approved for an item).

2 If employee exposure (either to safety or health hazards) is not observed, state facts on which the determination is made that an employee has been or could be exposed. In appropriate cases, state what the employer could have or should have done to be in compliance. When violations are grouped, describe the reason for grouping. If a specific type of hazard exposure is caused by the combination of violations, describe it in sufficient detail.

3 If the cited employer neither created nor controlled the violative condition, state the name and relationship of the responsible party; e.g., prime contractor, electrical subcontractor, building owner or equipment lessor. Describe any steps taken by the cited employer to have the condition corrected.

b. Health Inspections. There are special documentation requirements for health inspections.

(1) Employee Exposure. The compliance officer shall record all relevant information concerning potential exposure to chemical substances or physical hazards such as symptomatology, duration and frequency of the hazard, pertinent employee comments, sources of potential health hazards, locations of employees pertinent to the inspection, types of engineering controls, use of personal protective devices including respirators, ear and eye protection, clothing, etc. and shall collect Material Safety Data Sheets where available and appropriate.

(2) Employee Activities. The compliance officer shall observe

employee activities throughout the establishment, concentrating particularly on potentially hazardous areas.

- (a) Estimate numbers of employees at each operation to be evaluated, indicating whether they are engaged in stationary or transient activities.
 - (b) Interview employees.
 - (c) Record the duration and frequency of cyclic work processes, describing potential exposures during each phase of the cycle.
- (3) Program Evaluation. The compliance officer shall request and evaluate information on the following aspects of the employer's occupational safety and health program (to be discussed in detail at the closing conference).
- (a) Monitoring. The employer's program for monitoring safety and health hazards in the establishment should include a program for self-inspection. The compliance officer shall discuss the employer's maintenance schedules and inspection records. Additional information shall be obtained concerning such employer activities as sampling and calibration procedures, ventilation measurements, preventive maintenance programs for engineering controls, laboratory services, and use of industrial hygienists and accredited laboratories. Compliance with the monitoring requirement of any applicable standard shall be determined.
 - (b) Medical. The compliance officer shall determine if the employer provides the employees with preplacement and periodic medical examinations. The medical examination protocol shall be requested to determine the extent of the medical examinations and, if applicable, compliance with the medical surveillance requirements of any applicable standard.
 - (c) Recordkeeping. The compliance officer shall determine the extent of the employers' recordkeeping program. This is not to be limited to Hawaii OSH-required records, but shall be extended to information pertinent to the inspection such as:
 - 1 Preserving records pertaining to employee exposure and medical records in accordance with section 12-202-3 of the standards; and
 - 2 Availability to the affected employees of the results of exposure and medical records under section

12-202-3, where a specific standard has provisions for employee access to the records.

- (d) Compliance. The employer's compliance program may include engineering, work practice, and administrative controls and the use of personal protective equipment. The compliance officer shall identify the following.
 - 1 Engineering Controls. Pertinent engineering controls consist of substitution, isolation, ventilation, and equipment modification.
 - 2 Work Practice and Administrative Controls. These control techniques include personal hygiene, housekeeping practices, and rotation of employees.
 - a There should be a program of employee training and education to utilize work practice controls effectively. Where pertinent, the compliance officer shall obtain a detailed description of these controls.
 - b The compliance officer shall evaluate the overall effect of these practices and programs, considering the employees' knowledge of their exposures.
 - c Rotation of employees as an administrative control requires employer knowledge of the extent and duration of exposure.
 - 3 Personal Protective Equipment. An effective personal protective equipment program shall exist in the establishment when required. A detailed evaluation of the program shall be made to determine compliance with the specific standards which require the use of protective equipment (e.g., chapters 64, 114, and 200 of the standards).
- (e) Regulated Areas. The compliance officer shall investigate compliance with the requirements for regulated areas as specified by certain standards.
 - 1 Regulated areas must be clearly identified and known to all appropriate employees.
 - 2 The regulated area designations must be maintained according to the prescribed criteria of the applicable standard.
- (f) Emergency Procedures. The compliance officer shall

evaluate the employer's emergency program.

- 1 When standards provide that specific emergency procedures be developed where certain hazardous substances are handled, the evaluations shall determine if:
 - a Potential emergency conditions are included in the written plan;
 - b Emergency conditions have been explained to employees; and
 - c There is a training scheme for the protection of affected employees including use and maintenance of personal protective equipment.
- 2 Where hazardous substances are handled for which there are no standards requiring emergency procedures, the compliance officer shall, nevertheless, determine if these procedures have been established.

(4) Collecting Samples. The compliance officer shall determine as soon as possible after the start of the inspection if sampling is required by utilizing the information collected during the walkaround and from the preinspection review.

(a) If sampling is necessary a sampling strategy shall be developed by considering potential chemical and physical hazards, number of samples to be taken, and the operations and locations to be sampled.

- 1 There shall be no undue delay between development of the sampling strategy and the actual sampling.
- 2 If a delay of more than 5 working days is unavoidable, the reasons for the delay shall be included in the case file and the employee representative shall be notified of the delay and of any appointment made with the employer to begin on-site sampling.

(b) When work schedules other than the usual 8-hour day are encountered (e.g., 4 10-hour days per week), the following procedures shall be used.

- 1 Sampling for employee exposure levels shall be performed as usual; separate sampling shall be

conducted to determine any additional exposure beyond the 8-hours.

- 2 The results from the sampling shall be compared to the Permissible Exposure Limits (PEL) to determine whether or not an overexposure exists. The PEL shall be calculated as in §12-202-5 and §12-202-6.

- (c) See the OSHA Technical Manual, for additional specific technical instructions.
- (d) If either the employer or the employee representative requests sampling results, summaries of the results shall be provided to the requesting representative as soon as practicable after consultation with the branch manager.

- c. Taking Photographs. Photographs shall be taken whenever the need is indicated in the compliance officer's professional judgment. When taken, photographs shall be printed only if required for documentation purposes. If printed they shall be properly labeled and placed in the case file.

NOTE: In all cases the compliance officer shall ensure that using flash or spark-producing equipment will not be hazardous. In addition, the compliance officer shall ensure that employees are not unexpectedly startled by the use of flash equipment.

- d. Employee Interviews. A free and open exchange of information between the compliance officer and employees is essential to an effective inspection. Interviews provide an opportunity for employees to point out hazardous conditions and, in general, to provide assistance as to what violations of the standards may exist and what abatement action should be taken.

- (1) Purpose. Section 12-51-10 authorizes the compliance officer to question any employee privately during regular working hours in the course of a DOSH inspection. The purpose of these interviews is to obtain whatever information the compliance officer deems necessary or useful in carrying out the inspection effectively. These interviews, however, shall be conducted within reasonable limits and in a reasonable manner and shall be kept as brief as possible. Individual interviews are authorized even when there is an employee representative.

- (2) Employee Right of Complaint. Although employees may be represented on the walkaround, this does not prevent the compliance officer from consulting with any employee who desires to discuss a possible violation, if the discussion will not interfere with the conduct of the inspection. Upon receipt of an allegation of a violation, the compliance officer shall inspect, where possible, for the alleged violation and record the findings.

- (a) Section 12-51-10 affords any employee an opportunity to bring any condition believed to violate a standard or §12-51-1 to the attention of the compliance officer during an inspection.
 - (b) In certain instances, the employer or the employee walkaround representative may not be able to provide all the necessary information regarding an accident or possible violation. The compliance officer shall consult with employees while conducting the walkaround inspection and, if considered necessary or useful, shall schedule interviews with employees who may have knowledge of pertinent facts.
- (3) Time and Location. Interviews normally will be conducted during the walkaround; however, they may be conducted at any time during an inspection.
- (a) Workplace. If requested by the employee and considered necessary by the compliance officer, additional consultation shall be scheduled at a time convenient to all parties concerned with, preference given to employee breaks or off-time. In retail or service establishments, or in continuous production operations (e.g., assembly line), interviews shall be scheduled to afford minimum interference with the employee's duties and the employer's business operations.
 - 1 The interview shall not be scheduled during peak periods when the employee must be "on the job" to perform assembly line work, make sales, or serve customers. An employee shall not be interviewed on the selling floor or in any areas used by the public during business hours.
 - 2 If an employee requests consultation at a time that would hinder production, work cycles, or the employer's operation, the compliance officer shall consult with the employee during break, meal time, or other appropriate times. If these instructions cannot be met, the interview shall be held away from the establishment.
 - (b) Other Than Workplace. Interviews may be held at the employee's home, the division office, or at any other suitable place in the community where privacy can be maintained.
- (4) Privacy. At the time of interview, employees shall be asked if they desire the interview to be in private. Whenever an employee expresses a preference that an interview be held in

private, the compliance officer shall make a reasonable effort to honor that request. Even in the absence of such a request, every reasonable effort shall be made to conduct interviews with employees in private.

NOTE: "In private" refers to the exclusion of the employer representative, not the employee representative unless the employee expresses a desire to be interviewed out of hearing of both the employer and the employee representatives.

(5) Interview Statements. Interview statements shall be obtained whenever the compliance officer determines that these statements are necessary to document adequately an apparent violation.

(a) Interviews shall normally be written, and the employee shall be encouraged to sign the statement. These are some examples of situations where the compliance officer shall normally obtain written statements:

- 1 When there is an actual or potential controversy between the employer and employee as to a material fact concerning a violation;
- 2 When there is a conflict or difference among employee statements as to the facts;
- 3 When there is a potential willful or repeated violation; and,
- 4 In accident investigations, when attempting to determine if apparent violations existed at the time of the accident.

(b) Interview statements normally shall be written in the first person and in the language of the employee. The wording of the statement shall be understandable to the employee and reflect only what has been brought out in the interview.

- 1 Any changes or corrections shall be initialed by the employee; otherwise, the statement shall not be altered in any way.
- 2 The statements shall end with wording such as: "I have read the above, and it is true to the best of my knowledge." The employee shall sign and date the statement and the compliance officer shall then sign it as a witness.
- 3 If the employee refuses to sign the statement, the compliance officer shall note the refusal on the

statement. The statement shall, nevertheless, be read to the employee and an attempt made to obtain agreement. A note that this was done shall be entered into the case file.

- (c) If the employee interview has been tape recorded, the conversation shall be transcribed and the transcription shall meet the requirements of D.8.d.(5)(a) and (b).

e. Special Circumstances.

- (1) Trade Secrets. Trade secrets are matters that are not of public or general knowledge. A trade secret is any confidential formula, pattern, process, equipment, list, blueprint, device, or compilation of information used in the employer's business, which gives an advantage over competitors who do not know or use it.

- (a) Policy. It is essential to the effective enforcement of the Law that the compliance officer and all DOSH personnel preserve the confidentiality of all information and investigations which might reveal a trade secret.

- (b) Restrictions and Controls. When the employer identifies an operation or condition as a trade secret, it shall be treated as such. Information obtained about these operations or conditions, including all negatives, photographs, and DOSH documentation forms shall be labeled "Confidential--Trade Secret."

1 Under §12-51-9, all information reported to or obtained by a compliance officer in connection with any inspection or other activity which contains or which might reveal a trade secret shall be kept confidential. This information shall not be disclosed except to other DOSH officials concerned with the enforcement of the Law or, when relevant, in any proceeding under the Law.

2 Reserved.

- (c) Photographs. If the employer objects to the taking of photographs because trade secrets would or may be disclosed, the compliance officer should advise the employer of the protection against disclosure afforded by §12-51-9. If the employer still objects, the compliance officer shall contact the supervisor.

- (2) Areas Requiring Immunization. If, during an inspection, a nonimmunized compliance officer encounters an area requiring immunization, the compliance officer shall not enter that area but shall note a description of the area, immunization required,

employees exposed, location, and other pertinent information in the case file.

(a) Nonimmunized Compliance Officer. The compliance officer shall consult with the supervisor about scheduling a properly immunized compliance officer for an immediate or later inspection, as applicable. The compliance officer shall then complete the inspection of all other areas of the establishment.

(b) Nonimmunized Walkaround Representative. If, during an inspection, a properly immunized compliance officer finds that walkaround representatives of employers and employees are not properly immunized and, therefore, not authorized in the area, a reasonable number of employees and the supervisor of that area shall be consulted concerning workplace health and safety. (See B.7. for additional information.)

(3) If a compliance officer observes apparent violations of laws enforced by other government agencies, such cases shall be referred to the appropriate agency.

9. Closing Conference. At the conclusion of an inspection, the compliance officer shall conduct a closing conference with the employer and the employee representatives. (On multi-employer worksites, the compliance officer shall decide if separate closing conferences will be held with each employer representative.) As in the case of the opening conference (see D.3.c.(1)), it is the employer's option to hold a joint closing conference. When the employer chooses to have a separate conference or when it is not practical to hold a joint closing conference, separate closing conferences shall be held; a written summary of each conference shall be made and attached to the case file. A copy of the written summaries will be available from the administrator upon request by the employer or the employee representative.

a. General. The compliance officer shall describe the apparent violations found during the inspection. During the course of the closing conference, both the employer and the employee representatives shall be advised of their rights to participate in any subsequent conferences, meetings, or discussions.

(1) Since the compliance officer may not have the results of collected samples prior to the first closing conference, a second closing conference shall be held by telephone or in person to inform the employer and the employee representative whether or not the establishment is in compliance.

(a) If the results indicate noncompliance, apparent violations, correction procedures, and interim methods of control shall be discussed in person.

- (b) If the employer is in compliance, sample results, which are equal to or exceed 50 per cent of the permissible exposure limit and any recommendations of the compliance officer on good safety and health practices shall be discussed with the employer and the employee representative by telephone.
- (2) When closing conferences are delayed pending receipt of sampling data or for any other reason, the employee representative shall also be afforded an opportunity to participate in the delayed conferences in accordance with the procedures given in D.9.
- (3) The strengths and weaknesses of the employer's occupational safety and health program shall be discussed at the closing conference.
- (4) During the discussion of apparent violations the compliance officer shall note any comments on the HIOSHL-1B-1H and obtain information for establishing correction dates. Justification for all recommended correction dates in excess of 30 days shall be recorded.
- (5) The compliance officer shall advise the employee representatives that:
 - (a) Under §396-11 of the Law, if the employer contests, the employees have a right to participate in the contest before the Appeals Board.
 - (b) They will be notified by the employer if a notice of contest is filed.
 - (c) They have discrimination complaint rights under §12-51-11(d). (See D.9.b.(12).)
- b. Specific. During the closing conference the compliance officer shall give the employer the publication, "Employer Rights and Responsibilities as Discussed in Closing Conferences," GIC No. 10, which explains the responsibilities and courses of action available to the employer if a citation is received. The compliance officer shall then briefly discuss the information on GIC No. 10 and answer any questions. All matters discussed during the closing conference shall be documented in the case file, including a note describing printed materials distributed.
- (1) Citation Issued. If citations are issued, copies shall be sent to the employer representative at the establishment and, in the case of a nonfixed establishment, at the employer's headquarters. Copies shall also be sent to any other employer representatives as requested by the attending representative.

- (a) A page of instructions, HIOSHL-2C, will be provided with each copy of the citation, and the employer shall be urged to read both the citation and HIOSHL-2C carefully. If the employer has any questions regarding the citations, the employer may contact the administrator at the address on the citation.
 - (b) The HIOSHL-2C informs the employer of the right to an informal conference.
 - (c) If the employer is a contractor on a military base or another government facility, copies of the citation shall be sent to the base commander or any other government officer-in-charge.
- (2) Citation Posting. The citation or a copy of it must be posted at or near the place where each violation occurred to inform the employees of hazards to which they may be exposed. If, because of the nature of the employer's operation, it is not practical to post the citation at or near the place where each violation occurred, the citation must be posted in a prominent place where it will be readily observed by all affected employees. The citation shall remain posted for 3 working days or until the violation is corrected, whichever is longer.
 - (a) If the citation is amended as a result of an informal conference or another procedure, a copy of the amended citation must also be posted along with a copy of the original citation.
 - (b) Even if contested, a copy of the citation still must be posted.
 - (c) If there is an authorized employee representative at the establishment, copies of the original citation and any subsequent citation amendments shall be sent to that representative as soon as possible after receipt of these documents by the employer. The HIOSHL-2C shall be sent with each copy of the citation.
- (3) Complying with Citation and Notification of Penalty. If the employer agrees to the citation and the penalty:
 - (a) The cited conditions must be abated by the dates set in the citation; and
 - (b) The penalty must be paid if one was proposed.
- (4) Contesting Citation and Notification of Penalty. The compliance officer shall advise the employer that the citation, the penalty, or the abatement date may be contested if, in good faith, the

employer does NOT agree to the citation, penalty, or abatement date.

- (a) Notice of Contest. The compliance officer shall tell the employer that, in order to contest, the administrator must be notified in writing within 20 days after receipt of the citation and notification of penalty. The compliance officer shall emphasize that a notice of intent to contest given orally will not satisfy this requirement to give written notification.

1 Employer Contest. This written notification, called a Notice of Intent to Contest, must clearly state what is being contested--which item of the citation, the penalty, the correction date, or any combination. The compliance officer shall ask the employer to read the HIOSHL-2C accompanying the citation for additional details.

a If the employer wishes only a later abatement date and there is a valid reason, the administrator should be contacted. The administrator may issue an amended citation changing an abatement date prior to the expiration of the 20 day period without the employer's filing a contest.

b If the employer contests only the penalty or only some of the citation items, all uncontested items must still be abated by the dates indicated on the citation and the corresponding penalties paid within 20 days of notification.

2 Employee Contest. The compliance officer shall indicate that the Law provides that employees or their authorized representatives have the right to contest any or all of the abatement dates set for a violation if they believe the dates to be unreasonable, provided the contest is filed within 10 days after the citation is posted.

NOTE: The definition of employee's authorized representative is found on page III-18.

- (b) Contest Process. The compliance officer shall explain that, when the Notice of Intent to Contest is properly filed, the administrator will forward the case to an independent agency, the Appeals Board at which time the case is officially in litigation.

- 1 Upon receipt of the Notice of Intent to Contest, the Labor and Industrial Relations Appeals Board will schedule a pretrial, at which time issues are defined and participants are identified, and subsequently a trial (hearing) will be scheduled in a public place.
 - 2 The Appeals Board will inform the employer or the employer's counsel of the procedural requirements which must be observed throughout the proceedings.
 - 3 The Appeals Board may uphold, modify, or eliminate any item of the citation or the penalty which the employer has challenged.
- (5) Informal Conference. The compliance officer shall advise those attending the closing conference of the following.
- (a) A request for an informal conference with the administrator is encouraged. This opportunity can be used to:
 - 1 Seek administrative resolution of disputed citations and penalties;
 - 2 Obtain a more complete understanding of the specific standards which apply;
 - 3 Discuss ways to correct the violations;
 - 4 Discuss questions concerning proposed penalties;
 - 5 Discuss problems with abatement dates;
 - 6 Discuss problems concerning employee safety and health practices;
 - 7 Learn more of other DOSH program projects and services available; and
 - 8 Obtain answers to other related questions.
 - (b) If a citation is issued, an informal conference or the request for one does not extend the 20-day period in which the employer or the employee representative may contest.
 - (c) That an oral statement of disagreement with or intent to contest a citation, penalty, or abatement date during an informal conference will not take the place of the required written notice of intent to contest.

- (d) The employer or the employer's representative has the right to participate in any informal conference or negotiations between the administrator and the employees.
 - (e) Affected employees or their representative have the right to participate in any informal conferences or negotiations between the administrator and the employer in accordance with the guidelines given in G of this Chapter.
- (6) Penalties. The compliance officer shall explain that penalties must be paid within 20 days after the employer receives the citation and notification of penalty. If, however, the employer contests the citation or the penalty in good faith, the penalties need not be paid for those items contested until the issues contested are resolved by the Appeals Board.
- (7) Abatement Action. The compliance officer shall explain the following.
 - (a) For violations, which the employer does not contest, the employer is expected to notify the administrator promptly that the cited conditions have been corrected by the abatement date set in the citation. The notification must explain the specific action taken with regard to each violation and the approximate date the corrective action was completed.
 - (b) When the citation permits an extended time for abatement, the employer must ensure that employees are adequately protected during this time. For example, the citation may require the immediate use of personal protective equipment by employees while engineering controls are being installed. The employer may be requested to send periodic progress reports on actions to correct these violations. If so, these reports shall be issued in writing and shall be subject to posting requirements.
- (8) Petition for Modification of Abatement Date. The compliance officer shall advise the employer that abatement dates are established on the basis of the information available at the time the citation was issued. When uncontrollable events or other circumstances prevent the employer from meeting an abatement date, a petition may be submitted for modification of the abatement date. Further information on petitions for modifications of abatement dates is included in the HIOSHL-2C accompanying any citation that is received. Details may be obtained from the administrator.
- (9) Followup Inspection. The compliance officer shall explain the following.

- (a) If the employer receives a citation, a followup inspection may be conducted to verify that the employer has:
 - 1 Posted the citation as required;
 - 2 Corrected the violations as required in the citation;
 - 3 Adequately protected the employees during multi-step or lengthy abatement periods; and
 - 4 Taken appropriate administrative or engineering abatement steps in a timely manner.
 - (b) The employer also has a continuing responsibility to comply with the Law. Any new violations discovered during a followup inspection will be cited.
- (10) Failure to Abate. The compliance officer shall explain that to achieve abatement by the date set forth in the citation, it is important that corrective efforts be promptly initiated. The employer shall be reminded that, under the Law, additional penalties of up to \$7,000 per day per violation shall be proposed if the employer is found during a followup inspection to have failed to abate by the time required on the HIOSHL-2 any violations which have not been contested.
 - (11) False Information. The compliance officer shall explain that, if the employer knowingly provides false information relating to efforts to correct cited conditions or in records required to be maintained, criminal penalties are specified in the Law.
 - (12) Employee Discrimination. The compliance officer shall emphasize that the Law prohibits employers from discharging or discriminating against an employee who has exercised any right under the Law, including the right to make safety or health complaints or to request a DOSH inspection. Complaints from employees who believe they have been discriminated against will be evaluated by DOSH. If the investigation discloses a probable violation of employee rights, DOSH may initiate legal action on behalf of employees whose rights have been violated.
 - (13) Variance. The compliance officer shall explain that the Law permits the employer to apply to DOSH for a temporary variance from a newly promulgated standard if the employer is unable to comply by the effective date because of the unavailability of materials, equipment, or technical personnel, or if accomplishing a task by an alternative means other than that which is required by the standard will provide greater safety for the employees. The employer also is encouraged to apply for a permanent variance from a standard if the employer believes that the facilities or

methods of operation at the establishment under consideration are at least as safe and healthful as would be ensured by the standard. More complete information on variances may be obtained from the administrator. No variances will be retroactive from the date of approval of the application.

- (14) Small Business Administration Loans. If asked by the employer, the compliance officer shall explain that the SBA does not currently provide either direct or guaranteed loans for DOSH compliance.
- (15) Reserved.
- (16) Referral Inspection. The compliance officer shall explain that when conditions not within the scope of the compliance officer's expertise are observed, those conditions will be referred to another compliance officer and, as a result, additional inspections may be scheduled.
- (17) Consultative Services. The compliance officer shall explain DOSH consultative services available to the employer and shall encourage the employer to use those services.

E. Abatement.

- 1. Period. The abatement period shall be the shortest interval within which the employer can reasonably be expected to correct the violation. An abatement date shall be set forth in the citation as a specific date, not a number of days. The abatement date shall be set so as to allow for a mail delay and the agreed-upon abatement time. When abatement is witnessed by the compliance officer during the inspection, the abatement period shall be "Abated during inspection."
- 2. Reasonable Abatement Date. The establishment of an abatement date requires the exercise of professional judgment on the part of the compliance officer.
 - a. This judgment shall be based on data found during the inspection or whatever subsequent information gathering is deemed necessary. In all cases, the employer shall be asked for any available information relative to the time required to accomplish abatement or any factors unique to the employer's operation, which may have an effect on the time needed for abatement.
 - b. All pertinent factors shall be considered in determining what is a reasonable period. These considerations may be useful in arriving at a decision:
 - (1) The gravity of the alleged violation;
 - (2) The availability of needed equipment, material, or personnel;
 - (3) The time required for delivery, installation, modification, or

construction; and

(4) Training of personnel.

3. Abatement Periods Exceeding 30 Calendar Days. Abatement periods exceeding 30 calendar days should not normally be necessary, particularly for safety violations. Situations may arise, however, especially for health violations, where additional time is required; e.g., a condition where extensive structural changes are necessary or where new equipment or parts cannot be delivered within 30 calendar days. When an abatement date is granted that is in excess of 30 calendar days, an explanation for this action shall be placed in the official file. Abatement dates in excess of one year may be granted by the branch manager with prior approval of the administrator.
4. Verification of Abatement. The branch manager is responsible for determining if abatement has been accomplished. When abatement is not accomplished at the time of the inspection or the employer does not notify the administrator of the abatement, verification shall be determined by telephone contact or by followup inspection.
5. Effect of Contest Upon Abatement Period. In situations where an employer contests either the period set for abatement or the citation itself, the abatement period shall be considered not to have begun until all administrative and court proceedings have been exhausted and have resulted in affirmation of the citation and abatement period. If there is an employee contest of the abatement date, the abatement requirements of the citation remain unchanged.
 - a. When the Appeals Board or a court has altered the abatement period, the abatement period as altered will be the applicable abatement period.
 - b. When an employer has contested only the amount of the proposed penalty, the abatement period continues to run unaffected by the contest.
 - c. When the employer does not contest, the employer must abide by the date set forth in the citation even if that date is within the 20-day notice of contest period. Therefore, when the abatement period designated in the citation is 20 days or less and a notice of contest has not been filed, a followup inspection of the worksite may be conducted for purposes of determining if abatement has been-achieved within the time period set forth in the citation. A failure to abate citation may be issued on the basis of the compliance officer's findings.
 - d. When the employer has filed a notice of contest to the initial citation within the proper contest period, the abatement period does not begin to run until the entry of a final Appeals Board order. Under these circumstances, any followup inspection within the contest period shall be discontinued and a failure to abate citation shall not be issued.

NOTE: There is one exception to the above rule. If an early abatement date has been designated in the initial citation and it is the opinion of the administrator that a situation bordering on imminent danger

is presented by the cited condition, appropriate imminent danger proceedings may be initiated notwithstanding the filing of a notice of contest by the employer

6. Feasible Administrative, Work Practice, and Engineering Controls in Health Inspections. Where applicable, (generally, during health inspections), the compliance officer shall discuss control methodology with the employer during the closing conference.
 - a. Engineering Controls. Engineering controls consist of substitution, isolation, ventilation, and equipment modification.
 - (1) Substitution may involve process change, equipment replacement, or material substitution.
 - (2) Isolation results in the reduction of the hazard by providing a barrier around the material, equipment, process, or employee. This barrier may consist of a physical separation or isolation by distance.
 - (3) Ventilation controls are more fully discussed in the OSHA Technical Manual.
 - (4) Equipment modification will result in increased performance or change in character, such as the application of sound absorbent material.
 - b. Administrative Controls. Any procedure which significantly limits daily exposure by control or manipulation of the work schedule or manner in which work is performed is considered a means of administrative control. The use of personal protective equipment (PPE) is not considered a means of administrative controls.
 - c. Work Practice Controls. Work practice controls are a type of administrative controls by which the employer modifies the manner in which the employee performs assigned work. This modification may result in a reduction of exposure through such methods as changing work habits, improving sanitation and hygiene practices, or making other changes in the way the employee performs the job.
 - d. Feasibility. Feasibility means that the abatement means required to correct a citation can be accomplished by the employer. The compliance officer, following current directions and guidelines, shall inform the employer, where appropriate, that a determination will be made as to whether engineering or administrative controls are feasible.
 - (1) Types of Feasibility. In general there are two types of feasibility determinations that DOSH must make with regard to potential abatement methods. Each will be discussed separately.
 - (2) Technical Feasibility. Technical feasibility is the existence of technical knowledge as to materials and methods available or adaptable to specific circumstances which can be applied to cited violations with a reasonable possibility that employee exposure to occupational hazards will be reduced.

- (a) Sources which can provide information useful in making this determination are:
 - 1 Similar situations observed elsewhere where adequate engineering controls do, in fact, reduce employee exposure;
 - 2 Written source materials or conference presentations that indicate that equipment and designs are available to reduce employee exposure in similar situations;
 - 3 Studies by a qualified consulting firm, professional engineer, industrial hygienist, or insurance carrier that show engineering controls are technically feasible;
 - 4 Studies and materials collected and prepared by Technical Support or the DOSH Librarian; and
 - 5 Equipment catalogs and suppliers that indicate engineering controls are technically feasible and are available.
 - 6 Information provided by other government agencies when their regulations apply to the operations involved and which may affect or limit the design or type of controls that may be used for abatement.
- (b) DOSH experience indicates that feasible engineering or administrative controls exist for most hazardous exposures.
- (c) A determination that engineering or administrative controls are not feasible shall not be made without consultation with the administrator.

(3) Economic Feasibility. Economic feasibility means that the employer is financially able to undertake the measures necessary to abate the citations received. The compliance officer shall inform the employer that, although the cost of corrective measures to be taken will generally not be considered as a factor in the issuance of a citation, it will be considered in establishing an abatement date during an informal conference or during settlement negotiations.

- (a) If the cost of implementing effective engineering, administrative, or work practice controls or some combination of these controls, would seriously jeopardize the employer's financial condition so as to result in the probable shut down of the establishment or a substantial part of it, an extended abatement date shall be set when postponement of the capital expenditures would have a beneficial effect on the financial performance of the employer.

- (b) If the employer raises the issue that the company has other establishments or other locations within the same establishment with equipment or processes which, although not cited as a result of the present inspection, nevertheless would require the same abatement measures as those under citation, the economic feasibility determination shall not be limited to the cited items alone. In these cases, although the employer will be required to abate the cited items within the time allowed for abatement, the opportunity to include both the cited and the additional items in a long-range abatement plan shall be offered.
 - e. Reducing Employee Exposure. Wherever feasible engineering, administrative, or work practice controls can be instituted, even though they are not sufficient to reduce exposure to or below the PEL, they shall be required in conjunction with personal protective equipment to reduce exposure to the lowest practical level.
7. Long-term Abatement Date for Implementation of Feasible Engineering Controls. Situations may arise, where it will be difficult to set a specific abatement date when the citation is originally issued, such as when an employer chooses to implement feasible engineering controls and uncertainty exists as to when the necessary equipment may be available. The compliance officer shall discuss the problem with the employer at the closing conference and, in appropriate cases, shall encourage the employer to seek a future informal conference with the administrator when further information is available.
- a. Final Abatement Date. The compliance officer and the supervisor shall make the best judgment possible as to a reasonable abatement date. A specific date for final abatement shall, in all cases, be included in the citation. The citation shall not permit the employer to submit a plan where the employer is allowed to set the abatement dates. At a later time, if necessary, an appropriate petition may be made by the employer to the administrator to modify the abatement date.
 - b. Employer Abatement Plan. If the employer wishes to submit an abatement plan for consideration by the administrator in setting the citation abatement date, the issuance of the citation may be delayed for a brief period. It should be noted, however, the division shall "promptly issue" the citations within the meaning of §396-10 of the Law. Accordingly, where the employer desires to submit an abatement plan prior to the issuance of the citation, this fact shall be noted in the file. Under these circumstances, if it appears that the citation might be delayed beyond 6 months from the date of alleged violation, the citation shall be issued prior to full consideration of the plan; but the employer shall be given the opportunity to provide as much information as practicable in setting of the abatement period.
- (1) Whether or not a plan is submitted before issuing a citation, an abatement plan submission may be provided for in the citation in addition to a final abatement date. When the plan is submitted, if the engineering or administrative corrections proposed by the employer appear to be all that are feasible based on the current technology, this fact may be stipulated and agreed to between DOSH and the employer. Such an agreement shall permit assurances in advance to the employer that the establishment will be in compliance where the provisions of the plan are

fully implemented.

- (2) It shall be made clear in the agreement that the employer is not relieved from instituting further engineering (or administrative) controls as they become technically feasible, if it is likely that the further controls will lower employee exposure when exposure without PPE remains over the PEL. In all situations where an agreement is proposed, the advice of the attorney general shall be sought on the legal implications. If an agreement is acceptable, the attorney general shall be requested to draft the agreement.

8. Multistep Abatement. The question of writing citations with multistep abatement periods will normally arise only in those situations in which ultimate abatement will require the implementation of feasible engineering methods, as distinguished from feasible administrative methods or the use of personal protective equipment. Multistep abatements shall be based on the conditions cited and the feasibility aspects.

a. General. A step-by-step program for abatement provides a tool for the compliance officer to monitor abatement progress after a citation has been issued. It also provides a means for the employer to make decisions and to set up schedules efficiently concerning the corrective actions and a means for the employee to understand the changes made to the working environment.

- (1) Where a violation of the noise or an air contaminant standard has been cited, the employer has the option of abating by feasible engineering or administrative controls. In rare cases, as discussed in c.(3) of this subsection, abatement may be accomplished through the use of personal protective equipment.

- (2) The procedures discussed below may have applicability to the setting of multistep abatement periods. The employer's option to use feasible engineering or administrative controls must be kept in mind when determining an appropriate abatement period.

b. Interim and Long-range Abatement. It will often be found that the cited employer has no effective personal protection program and, consequently, in addition to long-term abatement through the use of feasible administrative or engineering controls, proper abatement will include a short- term requirement that appropriate personal protective equipment be provided. Therefore, the branch manager, in issuing the citation, shall proceed as follows:

- (1) A short-range abatement date for the employer shall be set to give prompt temporary protection to employees pending formulation and implementation of long-range feasible engineering or administrative controls. Short-range administrative controls and protective equipment shall be specified in the citation as the interim protection. For example, the "Date By-Which Violation Must Be Corrected" column of the citation might read, "Appropriate personal protective equipment shall be issued to all affected employees by (give date approximately 5 days from the estimated receipt of the citation). Final responsibility to ensure the use of the protective equipment rests with the employer."

- (2) If it has been determined that the employer will use engineering controls to achieve abatement, a specific date shall be set in which the employer can reasonably be expected to implement engineering controls including enough time for the development of engineering plans and designs for these controls, as well as necessary construction or installation time.
 - (3) If, at a later time, it is found that the final abatement date cannot be met, appropriate petitions for modification of abatement date may be filed by the employer with the administrator.
- c. Considerations. In providing for multistep abatement the following factors shall be taken into consideration.
 - (1) DOSH believes that, generally, engineering controls afford the best protection to employees and that the employer should be encouraged to utilize these controls in all instances to the extent feasible. Administrative controls are the next best alternative to engineering controls as a long-range abatement solution. The noise and air contaminant standards require the use, at the employer's option, of either engineering or administrative controls if any of those controls are feasible. If there are no feasible administrative controls or if the employer chooses not to use them, then, of course, feasible engineering controls must be used.
 - (2) Economic feasibility is a major issue to be considered when imposing controls. Requirements that would threaten the economic viability of a given industry cannot be considered economically feasible.
 - (3) DOSH may decide not to require engineering controls for abatement but to allow the use of PPE to abate the violation, at least until such time as engineering controls become a less significant burden for the company when:
 - (a) Significant reconstruction of a single facility involving a capital expenditure which would seriously jeopardize the financial condition of the company is the only method whereby the employer could achieve effective engineering controls;
 - (b) There are no feasible administrative or work practice controls; and
 - (c) There are adequate personal protective devices available.
 - (4) Proper evaluation of the economic feasibility of engineering or administrative controls does not require the administrator to understand all available economic information before deciding that the issue of potential economic infeasibility is involved. It is sufficient that the employer produce evidence of economic hardship adequate to convince the administrator that abatement by these controls would involve considerable financial difficulty.
 - (5) Whenever an employer complains that an unbearable economic burden

would result from implementation of engineering or administrative controls, the branch manager shall request evidence from the employer. The problem shall then be discussed with the administrator who shall render a decision.

- (6) In those limited situations where there are no feasible engineering or administrative controls, full abatement can be allowed by protective devices.

9. Petitions for Modification of Abatement. Section 12-51-17 governs the disposition of petitions for modification of abatement (PMAs). If the employer requests additional time, the following procedure for PMAs is to be observed.

- a. Filing Date. A petition for modification of abatement date must be in writing, and shall be filed with the administrator no later than the close of the next business day following the date on which abatement was originally required. A late petition shall be accompanied by the employer's statement of exceptional circumstances explaining the delay.
- b. When a PMA is Anticipated. Whenever a citation for engineering controls or another violation which the branch manager believes can reasonably be expected to give rise to a future PMA, the following procedures shall apply.
 - (1) A followup date 45 days prior to the final abatement date shall be entered into the information retrieval system used by the branch. When that followup date arrives, the file shall be pulled and reviewed by the supervisor and the compliance officer involved.
 - (2) After review the branch manager shall contact the employer to determine abatement progress. Information on the status of abatement shall be obtained and the potential need for additional time discussed with the employer. If the employer indicates that more time will be necessary to complete correction of the citations, the procedures for seeking a PMA shall be explained.
- c. Requirements for a PMA. If a letter is received from an employer requesting a modification of abatement, the branch manager shall determine that all of these five requirements are set forth in detail in the employer's petition:
 - (1) All steps taken by the employer and the dates of the action in an effort to achieve compliance during the prescribed abatement period;
 - (2) The specific additional abatement time estimated to achieve compliance;
 - (3) The reasons additional time is necessary, including the unavailability of professional or technical personnel or of materials and equipment, or because necessary construction or alteration of facilities cannot be completed by the original abatement date;
 - (4) Interim steps being taken to safeguard the employees against the cited hazard during the abatement period; and

- (5) A certification that a copy of the petition has been posted in a conspicuous place near the location where the violation occurred or where all affected employees will have notice thereof. The petition shall remain posted for 10 days and, if appropriate, served on the authorized representative of affected employees. The certification shall include the date upon which the posting and service was made.
- d. Failure to Meet All Requirements. If the letter does not meet all the requirements of E.9.c. above, a letter listing these requirements and specifying the missing elements shall be sent to the employer within 10 working days, specifying a reasonable amount of time for the return of the completed PMA. If no response is received or if the information returned is still insufficient, a second attempt shall be made. The employer shall be informed of the consequences of a failure to respond adequately, namely, that the PMA may not be granted and the employer may, consequently, be found in failure to abate upon followup inspection.
- e. Abatement Efforts. The branch manager shall take the steps necessary to ensure that the employer is making a good faith attempt to bring about abatement as expeditiously as possible.
 - (1) Where engineering controls have been cited or required for abatement, as a service to the employer, a monitoring inspection shall normally be scheduled to evaluate the employer's abatement efforts and to provide any technical assistance.
 - (2) Where no engineering controls have been cited but more time is needed for other reasons not requiring assistance from DOSH, such as delays in receiving equipment, a monitoring visit shall not normally be scheduled.
 - (3) If a monitoring inspection is to be conducted, it shall be scheduled as soon as possible after the initial contact with the employer and shall not await the actual receipt of the PMA.
 - (4) The compliance officer shall decide if sampling is necessary and, if so, to what extent; i.e., spot sampling, short-term sampling, or full-shift sampling.
 - (5) The compliance officer shall include in the narrative the findings pursuant to the inspection along with recommendations for action. In order to reach a valid conclusion when recommending action, it is important to have all the pertinent factors available in an organized manner. These factors shall be considered:
 - (a) Progress reports indicating the employer's good faith, effective use of technical expertise or management skills, accuracy of the information, and timeliness of progress reports;
 - (b) The employer's assessment of the hazards by surveys performed by in-house personnel, consultants, or the employer's insurance agency;

- (c) Documentation collected including verification of progress reports, successes or failures, and an assessment of current exposure to the employees;
- (d) Employer and employee interviews;
- (e) Specific reasons for requesting additional time including specific plans for controlling exposure and specific calendar dates;
- (f) Personal protective equipment;
- (g) Medical programs; and
- (h) Emergency action plans.

NOTE: Not all these factors will be pertinent in every PMA review. Neither are all the factors which must be considered in every case listed.

- f. Reserved.
- g. Reserved.
- h. Reserved.

F. Employer Abatement Assistance.

1. Policy. Compliance officers shall offer suggestions and explanations during the walkaround as to how hazards might be abated. The information provided should enable the employer to develop acceptable abatement methods or to seek appropriate professional assistance. This is to encourage and to facilitate expeditious abatement of hazards. In addition, this policy reinforces DOSH's goal of fostering cooperation between the division and employers.
2. Type of Assistance. The type of assistance provided to the employer will depend on the needs of the employer and the complexity of the hazard. Where standards specify abatement methods, such as guarding of belts and pulleys, the compliance officer shall as a minimum ensure that the employer is aware of the specifications. For more complex problems, the compliance officer shall offer general information on types of controls or procedures commonly used to abate the hazard. Alternative methods should be provided whenever possible. (See E.6 for more specific requirements on health inspections.)
3. Disclaimers. The employer shall be informed of the following:
 - a. The employer is not limited to the abatement methods suggested by DOSH.
 - b. The methods explained are general and may not be effective in all cases.
 - c. The employer is responsible for selecting and carrying out an appropriate

abatement method.

4. Procedures. Information provided by DOSH to assist the employer in identifying possible methods of abatement for alleged violations shall be provided to the employer as it becomes available or necessary. The issuance of citations shall not be delayed.
 - a. Assistance Provided During An Inspection. Compliance officers shall utilize their knowledge and experience in providing the employer with abatement assistance during the inspection. Before leaving an inspection site, compliance officers shall determine if the employer wishes to discuss possible means of abating apparent violations. Preferably, this discussion should be initiated during the walkaround when an apparent violation is noted. The discussion may continue at the closing conference. Compliance officers shall briefly document abatement information provided to the employer or the employer's negative response to the offer of assistance on the appropriate HIOSHL-1B/1B-1H Form.
 - b. Assistance Provided After An Inspection. If a compliance officer cannot provide assistance during an inspection or if employers have abatement questions after the inspection, the supervisor shall ensure that resources available within the division office are researched. Additional information, if available, shall be provided as soon as possible to the employer in a manner deemed appropriate by the branch manager. Any communications with the employer shall be briefly documented in the case file. Where necessary, the branch manager shall request assistance from the administrator.
5. Services Available to Employers. The compliance officer or the supervisor shall convey to employers requesting abatement assistance that DOSH is willing to work with them even after citations have been issued. In addition, the employer shall be made aware of the availability of on-site consultation services funded by DOSH.

G. Informal Conferences.

1. General. Pursuant to §12-51-21, either the employer or employee representative may request an informal conference.
2. Procedures. Whenever an informal conference is requested either by the employer or by the employee or employee representative, both parties shall be afforded the opportunity to participate fully. If the requesting party objects to the attendance of the other party, separate informal conferences shall be held. During the conduct of a joint informal conference, separate or private discussions shall be permitted if either party so requests. It is the branch managers' responsibility to ensure that all parties are notified of the date and time of the informal conference.
 - a. Notification of Participants. After an informal conference has been scheduled, the affected parties shall be notified of the date, time, and place in writing and, if possible, by telephone. This notification shall be

documented in the case file.

- b. Participation by DOSH Officials. The inspecting compliance officer and supervisor shall also be notified of an upcoming informal conference and, if practicable, given the opportunity to participate in the informal conference. In any case they will be consulted before the administrator enters into any final agreement involving the withdrawal and amendment of a citation item.
 - (1) In order to ensure that discussions of any possible settlement or modifications to the citation(s) and penalty may be completely and accurately recalled, at least one other DOSH employee shall be present at the informal conference. This employee may be the compliance officer, supervisor, a clerical staff member, or other assigned person.
 - (2) The branch manager shall ensure that notes are made indicating the basis for any decisions taken at or as a result of the informal conference. It is appropriate to tape record the informal conference and to use the tape recording in lieu of written notes, but the tape recording is not a substitute for the DOSH conference participant.
- c. Conduct of the Informal Conference. The administrator shall conduct the informal conference in accordance with the following guidelines.
 - (1) Opening Remarks. The remarks shall include discussions of:
 - (a) Purpose of the informal conference;
 - (b) Rights of participants;
 - (c) Contest rights and time restraints;
 - (d) Limitations, if any;
 - (e) Settlement of cases; and
 - (f) Other relevant information.
 - (2) Conference. The conference shall include discussion of any relevant matters including citations, safety and health programs, conduct of the inspection, means of correction, and penalties, in accordance with the following:
 - (a) All parties shall be encouraged to participate fully so their views are properly considered.
 - (b) Issues discussed shall be fully considered before making a determination regarding possible settlement of the case in accordance with current DOSH procedures.

- (c) DOSH representatives shall make every effort to assist both the employer and the employee representatives to improve safety and health in the workplace.
 - (d) Relevant notes of the discussion shall be made and placed in the case file.
- (3) Closing. At the conclusion of the discussion the main issues and courses of action shall be summarized. A written summary of the informal conference shall be provided to all participants as soon as practicable following its conclusion. A copy of the summary, together with any other relevant notes or tapes of the discussion made by the branch manager, shall be placed in the case file.
- d. Decisions. At the termination of the informal conference, the administrator shall make a decision as to what action is appropriate in the light of facts brought up during the conference.
 - (1) When preparing to make a decision to amend a citation, the administrator will make a reasonable effort to obtain the views of the employee representative, if there is one. (There is no need to contact the employee representative if only a penalty adjustment is involved.)
 - (2) Changes to citations and penalties shall be made in accordance with current DOSH procedures and the reasons for these changes shall be adequately documented in the case file.
 - (3) Affected parties shall be notified of the results or decisions of the informal conference in accordance with current DOSH procedures.
 - (4) The compliance officer who conducted the inspection and his or her supervisor shall be informed of the results or decisions of informal settlement agreements or amended citations.
 - (5) For more detail on settlement agreements, see Chapter V, H.
- e. Failure to Abate. If the informal conference involves an alleged failure to abate, the branch manager may set a new abatement date in the informal settlement agreement, documenting for the case file the time that has passed since the original citation, the steps that the employer has taken to inform the exposed employees of their risk and to protect them from the hazard, and the measures that will have to be taken to correct the condition.
 - (1) Once a new abatement date has been set, a modification of abatement date following current IMIS procedures shall be entered into the data system.

- (2) A letter shall be sent reminding the employer in the strongest possible terms that abatement is legally required if no written notice of contest is submitted within the contest period for the Notification of Failure to Abate Alleged Violation.
- (3) The employer shall also be reminded that if there is any problem in meeting the new abatement date after it becomes a final order, a written PMA must be filed with the branch manager in accordance with E.9.a.

H. Followup Inspections.

1. Inspection Procedures. The primary purpose of a followup inspection is to determine if the previously cited violations have been corrected. There shall be no additional inspection activity unless, in the judgment of the compliance officer, there have been significant changes in the workplace which warrant further inspection activity. In such a case, the supervisor shall be consulted.
2. Failure to Abate. A failure to abate exists when the employer has not corrected a violation for which a citation has been issued or has not complied with interim measures involved in a multi-step abatement within the time given.
 - a. Initial Followup. The initial followup is the first followup inspection after issuance of the citation.
 - (1) If an employer has failed to abate a violation, the compliance officer shall inform the employer that the employer is subject to a Notification of Failure to Abate Alleged Violations and proposed additional daily penalties while the failure or violation continues.
 - (2) Failure to comply with interim abatement dates involving multistep abatement shall be subject to a Notification of Failure to Abate Alleged Violation.
 - (3) Where the employer has implemented some controls, but other technology was available which would have brought the levels of airborne concentrations or noise to within the regulatory requirements, a failure to abate notification shall be issued unless the employer has exhibited good faith, in which case a PMA for extenuating circumstances may be considered.
 - (4) Where failure to abate by means of engineering controls is found to be due to technical infeasibility, no failure to abate notice shall be issued; however, if proper administrative controls, work practices, or personal protective equipment are not utilized, a failure to abate notification shall be issued. A determination of technical infeasibility shall not be made without consultation with the administrator.
 - (5) There may be times during the initial followup when, because of an employer's flagrant disregard of a citation or an item on a

citation, or other factors, it will be apparent that additional administrative enforcement actions will be futile. The branch manager shall notify the administrator, in writing, of all the particular circumstances of the case for referral to the attorney general.

b. Second Followup. Any subsequent followup after the initial followup dealing with the same violations is a second followup.

(1) After the Notification of Failure to Correct Alleged Violation has been issued, the branch manager shall wait 20 days (period of contest) before conducting a second followup. If the employer contests the proposed additional daily penalties, a followup inspection shall still be scheduled to ensure correction of the original violation.

(2) If a second followup inspection reveals the employer has still not corrected the original violations, additional daily penalties will not normally be proposed. The branch manager shall immediately contact the administrator, detailing the circumstances so the matter can be referred to the attorney general for action in accordance with '396-10(f) of the Law.

3. Reports. The applicable identification and description sections of the HIOSHL-1B/1B-1H Form shall be used for documenting correction of wilful, repeat, and serious violations and failure to correct items during followup inspections. If violation items were appropriately grouped in the HIOSHL-1B/1-1H in the original case file, they may be grouped on the followup HIOSHL-1B/1-1H; if not, individual HIOSHL-1B/1B-1H Forms shall be used for each item. The correction of general violations may be documented in the narrative portion of the case file.

a. Proper Documentation. The correction circumstances observed by the compliance officer shall be specifically described in the HIOSHL-1B/1B-1H, including any applicable dimensions, materials, specifications, personal protective equipment, engineering controls, measurements or readings, or other conditions. Brief terms such as "corrected" or "in compliance" will not be accepted as proper documentation for violations having been corrected. When appropriate, this written description shall be supplemented by a photograph to illustrate correction circumstances. Only the item description and identification blocks need be completed on the followup HIOSHL-1B/1B-1H with an occasional inclusion of an applicable employer statement concerning correction under the employer knowledge section, if appropriate.

b. Sampling. The compliance officer conducting a followup inspection to determine compliance with violations of air contaminants and noise standards shall decide if sampling is necessary, and if so, what kind; i.e. spot sampling, short term sampling, or full-shift sampling. If there is reasonable probability of an issuance of a Failure to Abate Notice, full-shift sampling is required.

- c. Narrative. The compliance officer shall include in the narrative the findings pursuant to the inspection, along with recommendations for action. In order to reach a valid conclusion when recommending action, it is important to have all the pertinent factors available in an organized manner.
 - d. Failure to Abate. In the event that any item has not been abated, complete documentation shall be included on an HIOSHL-1B/1B-1H.
4. Followup Files. The followup inspection reports shall be included with the original (parent) case file.

I. Conduct of Monitoring Inspection (PMAs and Long-Term Abatement).

- 1. General. An inspection shall be classified as a monitoring inspection when a safety or health inspection is conducted to:
 - a. Determine the progress an employer is making toward final correction;
 - b. Ensure that the target dates of a multi-step abatement plan are being met;
 - c. Ensure that an employer's petition for the modification of abatement dates is made in true and good faith and that the employer has attempted to implement necessary controls as expeditiously as possible; or
 - d. To ensure that the employees are being properly protected until final controls are implemented.
- 2. Procedures. Monitoring inspections shall be conducted in the same manner as followup inspections.